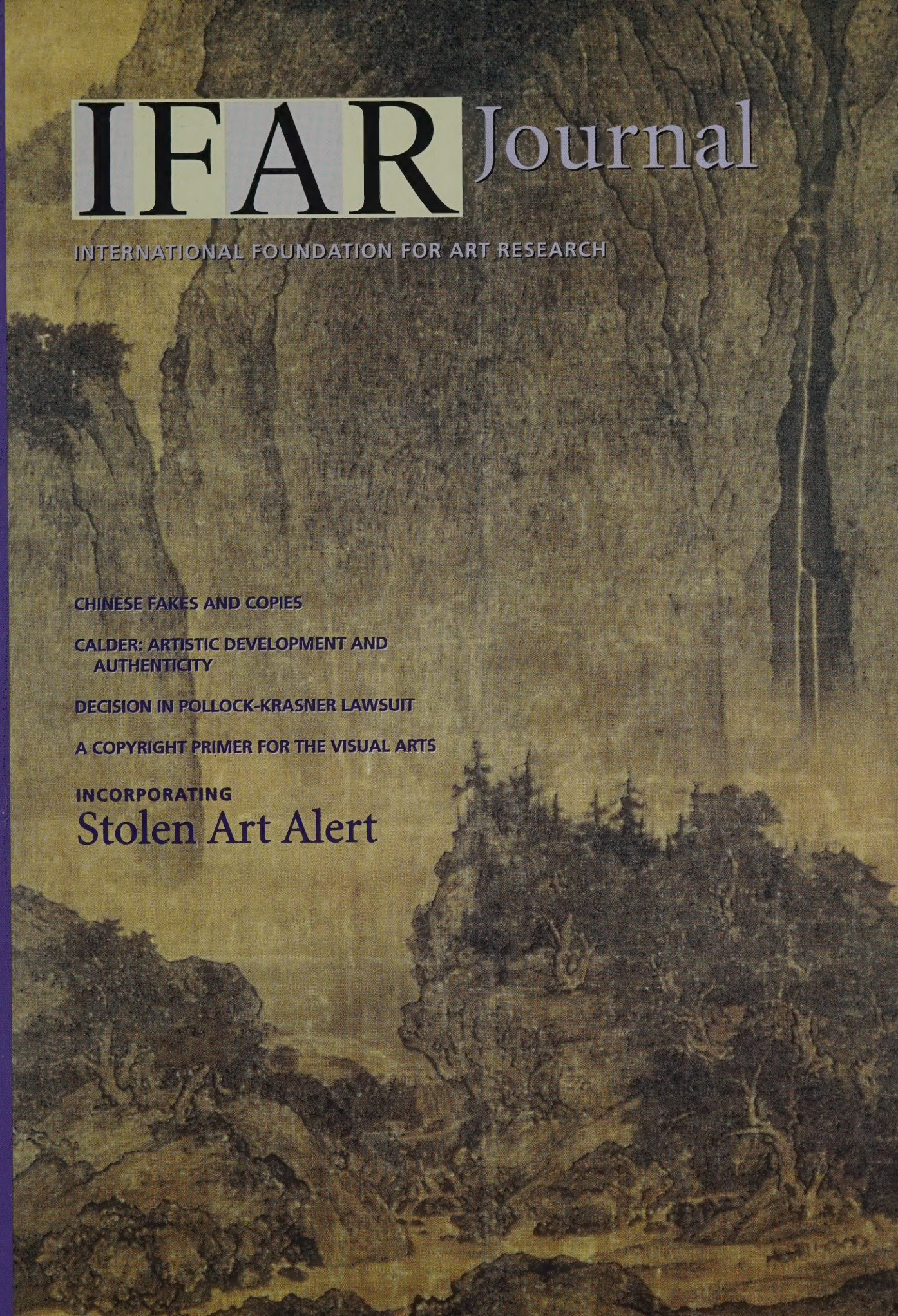
VOLUME 3 NUMBER 2 SPRING/2000

IFAR Journal

INTERNATIONAL FOUNDATION FOR ART RESEARCH



CHINESE FAKES AND COPIES

CALDER: ARTISTIC DEVELOPMENT AND AUTHENTICITY

DECISION IN POLLOCK-KRASNER LAWSUIT

A COPYRIGHT PRIMER FOR THE VISUAL ARTS

INCORPORATING
Stolen Art Alert

IFAR *Journal*, ISSN 1098–1195, is published quarterly by the International Foundation for Art Research, Inc., 500 Fifth Avenue, Suite 1234, New York, NY 10110. Subscription rates are $65 per year. PERIODICALS postage pending at New York, NY 10036 and at additional mailing offices. POSTMASTER: Send address changes to the International Foundation for Art Research, Inc., 500 Fifth Avenue, Suite 1234, New York, NY 10110.

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IFAR Journal

INTERNATIONAL FOUNDATION FOR ART RESEARCH

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Stolen Art Alert

Cover: Fan Kuan (active ca.990-1030). Detail. *Travelers Amid Streams and Mountains*. Hanging scroll; ink and color on silk. 81¼" x 40¾" (206.3. x 103.3 cm). National Palace Museum, Taipei. See story, p. 10.

LOOTED WALDMÜLLER LANDSCAPE RETURNED TO BERLIN MUSEUM

CIRCUITOUS PATH INCLUDED PARIS, TURKEY, AND NEW YORK

Fifty-five years after it was taken from a supposedly secure hiding place at the end of WWII, a landscape (Fig. 1) by the Austrian painter Ferdinand Waldmüller (1793-1865) was returned in May to the National Gallery in Berlin. The painting, *Praterlandschaft*, is an oil on wood depicting the Prater Park in Vienna. It is one of several works by Waldmüller owned by the Berlin National Gallery and stored in 1939 in the "Flakturm Zoo," an anti-aircraft tower at the Berlin Zoological Garden. Last seen in May 1945, the painting was assumed to be destroyed or looted.

"Two businessmen . . . acquired the painting in Turkey in March of 1999 apparently hoping to make a quick profit . . ."

Figure 1. Ferdinand Georg Waldmüller (1793-1865) *Praterlandschaft*. Oil on wood. Looted c. May 1945; returned to the National Gallery in Berlin, May 2000.

Hints that the painting existed arose in 1998 when an art gallery in Vienna phoned German officials about anonymous Russian citizens who were trying to sell it. A Munich dealer and a Budapest gallery were also involved. The following year, two businessmen who acquired the painting in Turkey in March 1999 apparently hoping for a quick profit, consigned it for auction at Sotheby's in New York. From photographs, Sotheby's estimated the value of the painting at $600,000–$1,000,000. But when the auction house actually saw it and did a provenance check, suspicions arose that the painting was one of the works taken from the Berlin museum. The businessmen had been told that the work was brought to Turkey by a young Turkish artist who had purchased it in Paris soon after the war, and that it was legally owned. Sotheby's held onto the painting and notified German authorities.

Was this the Same Painting?

The Berlin Waldmüller was included in a 1965 book on looted art, *Verlorene Werke Der Malerei*, listing all works still missing from German museums and galleries.[1] However, because of a discrepancy in the date on the painting, it was unclear initially whether the landscape consigned to Sotheby's was, in fact, the looted work. *Praterlandschaft* is signed and dated 1850, but the consignors argued that the date on *their* painting was 1830 and was thus not the same work, although the dimensions matched. Moreover, their painting did not have the inventory number from the German museum: A I 1856.

The consignors called IFAR in late summer 1999 for help in determining whether the works were one and the same. Although unable to take on the project, IFAR suggested, among other things, that they contact the German museum to learn more about its inventory methods and that they research whether Waldmüller was known to have made more than one version of the painting, and, if so, how they varied.

Meanwhile, the German museums had brought in their own experts. Professor Klaus-Peter Schuster, Director General, and Dr. Claude Keisch, Curator, of the National Gallery in Berlin, positively identified the painting and later called the tree that dominates it "the most beautiful ever painted by Waldmüller." As to the dating discrepancy, it had been addressed by scholars even before the Second World War; it was known that the date could be alternatively "read" as 1830, 1850, or 1860. As to versions of the painting, it was noted that when Waldmüller made versions of his oils on wood, he painted them on canvas. Perhaps most convincing, however, was the presence of a crack in the paint on the right side of the disputed painting that showed up in old photographs of the looted work.

"The consignors received an undisclosed finder's fee to cover legal and other costs . . . The German government, on principle, will not buy back its looted WWII works . . ."

1. Cf. Marianne Bernhard, Kurt Martin, and Klaus P. Rogner, *Verlorene Werke Der Malerei* (Munich, 1965), p. 53. This important book is out-of-print. In 1998, IFAR facilitated the printing of facsimiles of this book and others and made them available at cost to researchers and institutions.

A Finders Fee to the Consignors
An out-of-court settlement was reached. The Prussian Cultural Foundation, which, since 1957, has owned all works formerly in the Berlin National Galleries, was represented jointly with the German Consulate General in New York by Thomas Kline and Willi Korte of the law firm of Andrews & Kurth.

The consignors received an undisclosed finder's fee to cover legal and other costs. According to Ludwig Linden of the German Consulate in New York, the German government, on principle, will not buy back its looted WWII works. The fee was based upon a percentage of the painting's estimated market value. Although not well known in the United States (in fact, there are no known Waldmüllers in the U.S.) the market in Europe for Waldmüller is good, and the National Gallery in Berlin recently purchased a larger Waldmüller for approximately $2 million.

Several other Waldmüller paintings that were hidden during WWII are still missing. These include: *The Artist's Aunt* (Inventory No. A I 857); *The Artist's Daughter, Aloisia,* (No. A II 49); *Portrait of Mrs. Spindler* (No. A II 932).

—S.F.

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NYS ATTORNEY GENERAL SUES ART GALLERY FOR SELLING FAKE ART ON INTERNET

GALLERY'S OFFICERS INCLUDE JERRY SCHUSTER, WELL-KNOWN TO IFAR READERS

New York State Attorney General Eliot Spitzer filed a civil suit in Manhattan Supreme Court on May 25 against the Antique and Design Center of New Windsor, New York for fraudulent selling practices on the popular Internet auction site eBay. The suit charges the Center, among other things, of selling *at least* "23 counterfeit works of art, each bearing the forged signature of a famous artist." The officers of the Center, also known as The Antique Collection, are Jerrold and Jill Schuster.

Jerry Schuster is a familiar name to IFAR's audience. In 1980, Schuster, who was running an auction gallery in New Windsor, was convicted in Federal Court in Manhattan of knowingly selling paintings with forged signatures of famous artists and of reproducing Tiffany-style lamps with unauthorized Tiffany imprints. Schuster was sentenced to a year and a day in prison, followed by four years' probation. He was also fined $10,000. Ten years later, in 1990, he was convicted of conspiracy, bank fraud, mail fraud, and wire fraud, and was sentenced to three years in prison. Judge Gerald Goettel called him "a career fraud and a con artist" and prohibited him from returning to the art, antiques or auction business for three years after his release from prison.

The current suit follows a year-long investigation by Assistant Attorney General Kenneth M. Dreifach, working in the office's Internet Bureau. He was helped by several members of the Art Dealers Association (ADAA).

The Design Center advertises its gallery sales and its own live auctions on its own Web site: www.antique-connection.com. And, according to the suit, it offered fraudulent paintings on eBay under the name "sambuca914." The works were by well-known European and American artists, including Charles Burchfield, Guy Pène du Bois, George Luks, and Oscar Kokoschka. Several works were returned by dissatisfied eBay purchasers. They got their money back. But on at least eight known occasions, the Attorney General alleges, the

"A still-life sold . . . as a Kokoschka was actually painted by an art student, who signed it on the reverse . . ."

Figure 1. Still-life by art student allegedly sold as a Kokoschka on eBay. Oil on board. 24" x 21".

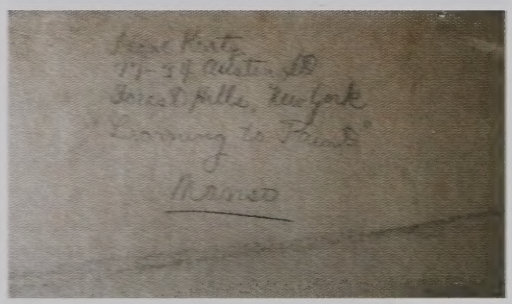

Figure 2. Signature "Diane Kurtz" on verso of still-life.

Center *resold* the same paintings with the original fraudulent attributions. The suit notes that "at least two of these resales occurred even after a *second* round of consumers returned the paintings as fakes."

The forgeries were not very sophisticated. A still-life that sold for $6,101 as a Kokoschka, for example, (Fig. 1) was actually painted by an art student, who signed it on the reverse: "Diane Kurtz... Forest Hills, New York 'Learning to paint' Manso" (Fig. 2). Apparently, she created

"Several works were later returned by dissatisfied eBay purchasers . . . . But on at least eight known occasions, the suit alleges, the Center resold the same paintings with the original fraudulent attributions."

it while in a class titled "Learning to Paint" taught by a New York instructor, Leo Manso. The initials on the painting's lower right, said to be "OK" (for Oscar Kokoschka), were actually "DK" (Fig. 3).

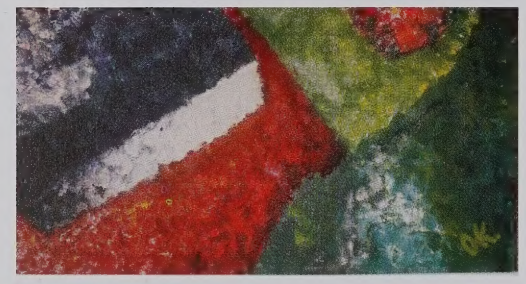

Figure 3. Initials lower right of still-life painting allegedly sold as a Kokoschka on eBay.

Figure 4. Painting signed "Guy Pène du Bois" sold on eBay. Oil on board. 12" x 9".

Also fake was a small painting attributed to Guy Pène du Bois (Fig. 4) and purchased by the same California resident who bought the Kokoschka. An affidavit written by conservator Simon Parkes noted that not only was the work distinct from Guy Pène du Bois' "style, composition and texture," but in addition to the "Guy Pène du Bois" signature in the left-hand corner, there is the signature "A.Weill" in the right-hand corner of the painting. This second signature, however, was not visible when the painting was offered on the Internet.

A watercolor supposedly by Charles Burchfield (Fig. 5) was determined to be a fake after examination by Martha Fleischman, President of the Kennedy Galleries and a representative of the Charles E. Burchfield Foundation. She cited, among other things, the painting's unskilled draftsmanship and a signature not only forged but lacking "confidence and fluidity."

After a Texas resident purchased "Indian Encampment," purportedly by the Taos artist Joseph Henry Sharp, he returned it to "sambuca9l4," saying that he had taken "it to [a] Texas art gallery and they believe it to be a fake." His money was refunded, but, the Attorney General's suit charges, the painting was then resold as authentic two more times to unwitting purchasers!

In addition to misrepresentations of authenticity, the center is also charged with falsifying provenance, presumably to add some cachet to the works. On at least seven occasions, the suit charges, works were said to have come from the George and Patricia Arden Estate. Mr. Arden, a well-known New York collector, died in 1983; his wife is still alive. Their son George signed an affidavit saying that none of the works ever belonged to his parents.

The suit alleges false advertising, deceptive consumer practices, and violations of New

Figure 5. Watercolor allegedly sold as a work by Charles Burchfield on eBay. Signed lower right.10" x 13".

York's Art and Cultural Affairs Law. The Center is charged under Executive Law §63(12); General Business Law §§349 and 350; Arts and Cultural Affairs Law §13.01; UCC §2 -313; and Penal Law §170.45. The Attorney General seeks a permanent injunction to stop the company's illegal activities, restitution to consumers, the posting of bond, and other civil penalties.

This case comes on the heels of other reports of fraudulent art sales practices on eBay. The Web site does not monitor the works being sold on its site. Transactions are strictly between seller and buyer. eBay has, however, been cooperating with authorities to help the investigations. The Web site is concerned about talk that it may be inadvertently facilitating the sale of fakes. IFAR knows this first-hand, because eBay contacted IFAR last year to discuss the problem, and IFAR has been exploring how it can be helpful to the public and to eBay purchasers in this regard.

—S.F.

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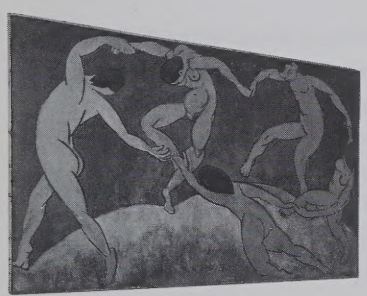
SHCHUKIN HEIR CLAIMS A MATISSE MASTERPIECE CONFISCATED BY LENIN

In an era of art restitution, it was only a matter of time before attention turned to

the private collections nationalized by the Bolsheviks after the Russian revolution. These works, including dozens of Impressionist and Post-Impressionist masterpieces, are now highlights of the Hermitage Museum in St. Petersburg and the Pushkin in Moscow. In June, a grandson of the noted Russian collector Sergei Ivanovich Shchukin claimed one of those works, Matisse's *Dance, II* (1910), while it was on exhibit in Italy. But the painting was precipitously flown back to Russia on June 13, two days before a Rome judge planned to hold hearings on the claim.

Shchukin (1854-1936), a textile merchant, amassed one of the great avant-garde art collections in Europe in the early part of the twentieth century. He owned the first Monet in Russia, as well as major works by Picasso, Cézanne, and Gauguin, among others. Most notably, he was one of Matisse's greatest patrons. By 1911, when he invited Matisse to Russia, Shchukin owned 34 works by Matisse. *Dance* II is one of two monumental canvases (12 feet each) commissioned by Shchukin in 1909 to decorate a stairway landing in his Moscow mansion. Using the



Henri Matisse, *Dance II*, 1910. Oil on canvas. 8.5′ x 12.82′. State Hermitage Museum, St. Petersburg.

themes of music and dance, Matisse later said that he was aiming in these works at "the bluest of blues for the sky, the greenest of greens for the earth, and a vibrant vermilion for the bodies." Shchukin's collection was confiscated in 1918, and he fled to Paris. *Dance* and *Music* entered the collection of the Hermitage. (An earlier version of *Dance* is in the collection of the Museum of Modern Art in New York.)

Dance was one of the paintings from the Hermitage lent to an exhibition in honor of Rome's Millennium celebration and the inauguration of a new museum near the Quirinale Palace. The exhibit was due to close later in June, but *Dance* was scheduled to detour to the Brera Museum in Milan before returning to Russia.

"Shchukin's grandson, . . . a resident of Paris, made a claim to Rome magistrates to impound the painting, citing its illegal expropriation in 1918."

Shchukin's grandson, André-Marc Delocque-Fourcaud, a resident of Paris, made a claim to Rome magistrates to impound the painting, citing its illegal expropriation in 1918. According to newspaper accounts, Delocque-Fourcaud noted that, as Shchukin's descendant, *all* the works from the collection were rightfully his, but that he was staking his claim on the most famous. It is also the most reproduced, and the heirs have stated their desire to benefit from reproduction rights. Before the Rome judge could hold the hearings preliminary to a July decision, however, the Director of the Hermitage abruptly cancelled the Milan exhibition and ordered *Dance* returned to Russia.

This was not the first time the Shchukin heirs have tried to claim the Russian collection. In 1954, they attempted to reclaim a group of Shchukin's Picassos loaned to a Paris exhibition. The courts rejected their claim, but that time, too, Moscow ordered the works immediately shipped back to Russia.

—S.F.

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CULTURAL PROPERTY ADVISORY COMMITTEE MEETS IN NEW YORK

The Cultural Property Advisory Committee (CPAC), an advisory body within the U.S. State Department, held a rare open session in New York City in June. Although the meeting was ostensibly for information purposes only, it included sharp criticism from art dealers and their representatives.

CPAC was created in 1983 under the Convention on Cultural Property Implementation Act, the enabling legislation for U.S. participation in the 1970 UNESCO Convention . . . on Cultural Property. As an advisory group, CPAC is responsible for reviewing requests by foreign governments seeking U.S. cooperation in restricting the importation of archaeological or ethnological material whose pillage places the foreign government's cultural heritage in jeopardy.

"CPAC is responsible for reviewing requests by foreign governments seeking U.S. cooperation in restricting the importation of archaeological or ethnological material."

Recently, as outlined in *IFAR Journal* (see Winter issue 1999/2000, p.12), CPAC's recommendations resulted in restrictions against the importation of artifacts from El Salvador, Bolivia, Cyprus, and Cambodia, the latter two under "emergency" legislation. The Committee has also recently considered a sweeping request from Italy to restrict importation of a broad range of objects from the 5th century B.C. to the 5th century A.D. It has made recommendations to the State Department, but the status of the recommendations is unknown.

"The dealers accused the State Department of using cultural property decisions as 'pawns' of foreign policy and said that the 1983 Implementing Act was . . . not a blanket endorsement of the UNESCO Convention."

By law, CPAC has eleven members appointed by the President of the U.S. for three-year terms. Membership on the Committee is designed to represent the communities affected by the legislation:

- Two members representing museums
- Three representatives of the general public
- Three experts in archaeology, anthropology, ethnography and related fields
- Three experts in the international sale of cultural property (art dealers, etc.)

Currently, there are no representatives from the last group—the art trade (and it is not clear when the President will appoint replacements). In late 1999, the only dealer still on the Committee, Gerald Stiebel from Rosenberg & Stiebel in New York, resigned in protest of the Committee's direction. He was one of those who spoke at the June meeting. CPAC has recently come under fire from dealers for having what they describe as an "anti-collecting bias."

Attending the open session were members of the art trade, archaeologists, museum staff, and others affected by CPAC recommendations. In an orderly but impassioned fashion, twelve people made formal statements for and against the recent direction of the Committee.

CPAC Chair Dr. Martin E. Sullivan stated that the meeting was for "information purposes only" and was not connected to a request from a foreign government, nor to Senate Bill 1696 (proposed by Senators Patrick Moynihan, William Roth, and Charles Schumer in October 1999) to amend the 1983 legislation. (The Senate Finance Committee has separately invited comments on that bill.)

In addition to what they described as their lack of representation, the dealers and their representatives pointed to several grievances, including the lack of "openness" in CPAC debates, and what they perceive as a conflict of interest on the part of the State Department, which has decision-making authority in CPAC-related cases. They accused the State Department of using cultural property decisions as "pawns" of foreign policy, and said that the 1983 Implementing Act was intended to be a compromise between conflicting interests, and not a blanket endorsement of the UNESCO Convention.

The State Department's Legal Advisor, Laurie Nierenberg, protested the dealers' accusations, saying that she wished she were as powerful as the dealers implied. Chairman Sullivan committed himself to openness and to providing information in a timely fashion, but noted that CPAC procedures are set by the State Department.

For their part, the archaeologists present—both on the Committee and in the audience—spoke of the need to preserve cultural heritage and combat the destruction brought on by looting, which, they believe, is spurred on by the trade.

The polemics are not new. Indeed, the debate is similar to the one that took place twenty years ago when the United States was considering passage of the UNESCO Convention. Dr. Gary Vikan, Director of the Walters Art Gallery in Baltimore and a museum representative on CPAC, noted that the sides are so polarized that if the dealers *were* better represented on the Committee, it might result not only in better balance, but possible total CPAC paralysis.

—S.F.

"The archaeologists spoke of the need to . . . combat the destruction brought on by looting, which, they believe, is spurred on by the trade . . . . The polemics are not new."

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BREAKING NEWS

Collector Shelby White Appointed to Cultural Property Advisory Committee

NEW YORK AMENDS LAW TO ALLOW CRIMINAL SEIZURE OF ART ON LOAN TO MUSEUMS

JUDGE RULES IN SCHIELE CASE

Governor George Pataki of New York has signed into law a much-debated amendment to New York's 1968 Arts and Cultural Affairs Law, which provided immunity from seizure for works of art loaned to museum exhibitions in New York. The amendment limits the immunity to civil cases. It goes into effect immediately and will expire in June 2002, at which time its impact will be evaluated. The new law stems from actions by Manhattan District Attorney Robert Morgenthau in 1998 to subpoena two paintings by the Austrian artist Egon Schiele while they were on loan to the Museum of Modern Art in New York. (See *IFAR Journal*, Summer 1998.)

"The new law stems from actions by Manhattan District Attorney Robert Morgenthau in 1998 to subpoena two paintings by . . . Egon Schiele while they were on loan . . ."

The paintings, *Portrait of Wally* and *Dead City*, loaned by the Leopold Foundation in Austria, were claimed by American heirs of victims of the Holocaust. Morgenthau had obtained a grand jury subpoena to keep the works in New York pending his criminal investigation into their ownership. MoMA argued that it was obligated under terms of its loan agreements to return the works and that the 1968 law was specifically designed to protect museums against such seizure so as not to discourage loan exhibitions. Morgenthau argued that the law protected only civil claims, not criminal. The courts sided with MoMA. In September 1999, the New York State Court of Appeals, ruled 6 to 1 that Mr. Morgenthau' s attempt to prevent the return of the works violated the 1968 law, which, the Court said, encompassed both civil and criminal claims.

Mr. Morgenthau then proposed an amendment to end protection from seizure in criminal cases. He stated that "New York should not be a haven for stolen art." The amended legislation passed both houses and went to Governor Pataki, at which point *The New York Times*, among others, went on record opposing it. In an editorial on May 15, *The Times* stated that "New York State should not become the forum for adjudicating the global problem of stolen artworks and disputed ownership. . . ." But the governor signed the amendment into law the following week.

The Schiele Decision

Meanwhile, *Portrait of Wally* remains in New York under a seizure warrant. The day after the highest state court ruled against Morgenthau, the U.S. Attorney's office in Manhattan and the U.S. Customs Service started a civil forfeiture proceeding in federal court. (The second painting, *Dead City*, claimed by a different family, was returned to Austria after the appeals court decision.) Both the Leopold Foundation and the Bondi family, the U.S. claimants, were asked to submit claims. On July 19, U.S. District Judge Michael Mukasey dismissed the government's forfeiture suit based on the fact that "the painting [could] not be considered stolen." At the end of WWII, U.S. Forces seized the painting from a Nazi. They restituted it, mistakenly, to the wrong family, who later sold it to the Belvedere (Gallery), which then sold it to the Leopold Foundation. This recovery, Mukasey said, "purged" the painting of its taint. Mukasey held that, according to federal doctrine, goods recovered by their owners or their agents are no longer considered stolen property. In this case, Mukasey wrote, the U.S. forces acted as "agents of Lea Bondi Jaray—even though they did not know her name, or that the painting was hers." The seizure warrant remains in effect pending a possible appeal.

—S.F.

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PRISON TERM FOR CONSPIRATOR IN BREMEN-BAKU ART CASE

BREMEN MUSEUM BEGINNING TO GET BACK ITS LOOTED WWII ART

A story first reported by IFAR five years ago was brought to conclusion in June with the sentencing in federal court in

Figure 1. Albrecht Dürer (German, 1471-1528). *Women in a Bathhouse*. Pen and ink? 22.8 x 23.0 cm. Part of the collection belonging to the Bremen Kunsthalle before World War II.

"The story begins in World War II. The stolen art was originally part of a large collection in the Bremen Kunsthalle."

New York of Natavan Aleskerova of Azerbaijan for her part in a scheme to sell stolen art works. (See *IFARreports* October 1995 and October 1997).

The complex tale involves drawings and prints stolen twice—first from the Bremen Kunsthalle in Germany at the end of World War II and then from a museum in Baku, Azerbaijan in 1993. The stolen art, including works by Rembrandt, Dürer, Carracci, Poussin, and Ruisdael, is valued at more than $10 million. Aleskerova was convicted in New York last year of conspiracy and also of possession and concealment of stolen property. In June, she was sentenced to eleven months in prison. One of the twists in this intriguing story is that she was formerly a prosecutor in Azerbaijan.

Of Aleskerova's two co-conspirators, one is dead and the other is a fugitive. The fugitive is her husband, Aydyn Ali Ibragimov. The other conspirator was an art dealer in Tokyo, Masatsugu Koga, who died last year from an assortment of medical problems.

Figure 2. Nicolas Poussin (French 1594-1665). *Landscape*. Sepia on paper. 16.0 x 26.7 cm. Part of the collection belonging to the Bremen Kunsthalle before World War II.

The Soviet Connection

The story begins in World War II. The stolen art was originally part of a large collection in the Bremen Kunsthalle. In 1943, some 50 paintings, 1,715 drawings, and 3,000 prints in the collection were moved for safe-keeping to Karnzow Castle, near Berlin. At war's end, Soviet soldiers occupied the castle, and individual members of the Engineering Brigade of the Soviet Army looted the works. For more than forty years, the works were presumed destroyed.

"The conspiracy to sell the stolen works took on . . . international proportions, with meetings in Istanbul, Bremen, Tokyo, and New York."

In 1989, one of the Soviet soldiers, Victor Baldin, who in the interim had become a museum director in Moscow, stunned the art world by announcing, in the spirit of *glasnost*, that he, personally, had saved 362 of the Bremen Old Master drawings and intended to return them. But, although the drawings were exhibited at the Hermitage in 1992, they have still not left Russia. They have been caught up in complex political maneuverings in Russia over the repatriation of Soviet war loot to Germany.

Then in 1993, a local newspaper in Baku reported that some of the art in the Baku Art Museum had stamps from the Bremen

Figure 3. Rembrandt, H. van Rijn, Circle of (Dutch 1606-69). *Haman Before Esther and Ahasuerus*. Ink on paper. 14.8 x 17.0 cm. Part of the collection belonging to the Bremen Kunsthalle before World War II.

Kunsthalle. Soon after, twelve of the Bremen Old Master drawings in Baku and approximately 200 prints and drawings from the Baku Museum's own collection were stolen.

The Conspiracy

Thus began a conspiracy to sell the stolen works that took on, in the words of the prosecution, "international proportions, with meetings and events in Istanbul, Bremen, Tokyo, and New York." Koga tried to negotiate a sale back to the Bremen Museum for $6 million; Aleskerova and her husband stashed the drawings at an apartment on Ocean Parkway in Brooklyn, New York, near where a large Russian emigré community resides. The drawings remained hidden in a closet in the Brooklyn apartment for more than a year, with Aleskerova returning several times from Baku to visit them.

The scheme unraveled when Koga traveled to New York in late 1997 to show some of the art to a curator of the Bremen Museum in a Manhattan Hotel. The curator alerted the U.S. Customs Service of the plan to sell the artworks back to Bremen. Once the art was definitively identified as belonging to the Museum, Customs agents seized the twelve Bremen drawings and later seized the approximately 200 other works that were

still hidden in the Brooklyn apartment. Koga was arrested; he pleaded guilty, and incriminated his co-conspirators. But he died of pre-existing medical problems two months before the Aleskerova case came to trial. It was, in fact, his need to pay for a kidney transplant, which, Koga insisted, had led him to get involved in the conspiracy scheme in the first place.

Aleskerova was not part of the hotel meeting. The next month, when she returned to the U.S., Customs agents, alerted of her arrival, began surveillance of her and later arrested her.

A Good Year for the Bremen Museum

Although still in the custody of the U.S. Customs Service in New York, the works of art will soon be returned to Bremen. This is a good year for the Bremen Museum. On April 29th, 101 Old Master drawings that belonged to the Bremen Kunsthalle before World War II and that were looted by Soviet soldiers after the war were returned to Germany in a historic ceremony at Yekaterinsky Palace, near St. Petersburg. In exchange, the German government presented Russia with a small piece of the famous Amber Chamber that had turned up in Bremen in 1997. The rest of the Amber Chamber, taken from St. Petersburg by Nazi troops in 1942, is believed to have been destroyed.

The 101 Bremen drawings represent the first official return of Soviet war loot to Germany since passage in Russia of a controversial restitution law in 1997. The law, upheld by Russian courts last year, nationalized looted art taken by the Soviet Army's official Trophy Brigades, but allows objects looted by Soviet individuals to be returned. Many Russian leaders, however, still oppose the return of *any* German items.

"The works of art will soon be returned to Bremen. This is a good year for the Bremen Museum. On April 29th, 101 Old Master drawings . . . that were looted by Soviet soldiers after the war were returned . . ."

—S.F.

. . .

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Copying Chinese Paintings: Flattery or Forgery? An *IFAR Evening* with H. Christopher Luce

Editor's Note: *On November 18, 1999, H. Christopher Luce (known as Kit) spoke to an IFAR audience about the Chinese painting tradition of copying and forging (Fig. 1). The setting for the talk and the elegant reception that followed was The Forbes Magazine Galleries. Mr. Luce, who studied Chinese art at Yale and Harvard, has collected Chinese paintings for 21 years. He is one of only two nonprofessionals who sit on a vetting committee for the International Asian Arts Fair. He has curated several exhibitions on Chinese art, including a 1995 exhibit: "Abstraction and Expression in Chinese Calligraphy," and a 1999 exhibit on Wang Fangyu, both at the China Institute. The following article, written by Mr. Luce, is a condensed version of his* IFAR Evening *talk.*

Figure 1. H. Christopher Luce. *IFAR Evening*, November 18, 1999.

A Different View Toward Copies

The concept of a genuine work and an imitation is by no means as clear cut in China as it is in the West, and the endemic ambiguity has affected not only traditional collecting, but as a direct consequence, modern scholarship as well. While famous works in all cultures are copied, Chinese art presents a special case. The Chinese held the principle of fugu, or returning to the past, as the foundation of personal creativity. This principle is intimately linked with the tradition of copying.

As a result, art forgery in China has never carried the dark connotations that it does in the West. To copy masterpieces was, and remains, widely practiced, and great works existed in numerous versions down through the centuries when copies of copies served as models for ensuing generations. In this process, genuine variations emerged which were, in their own right, creative contributions.

Copying, however, was not merely a stage in learning; it was valued in itself. Western attitudes generally maintain that copying is evidence of a lack of imagination and forgery is fraud. It is perhaps only in the performing arts that the combination of repetition and originality are appreciated. An actor may gain distinction for playing Hamlet, a role which has been performed thousands of times. The Chinese recognize that copying allows an artist—whether painter, calligrapher, actor, or musician—to benefit from cumulative experience.

"Art forgery in China has never carried the dark connotations that it does in the West. To copy masterpieces was, and remains, widely practiced . . . "

Respectful Imitation

Reproduction for Preservation

From the 11th century on, concern with stylistic lineage has overridden considerations of originality (Figs. 2 and 3). Reproductions by this method have provided models for many early calligraphers and preserved material that would otherwise have been lost. Expertly made copies of antique scrolls were considered to be as good as the originals or, in case the original was damaged, even better.

Already in the 5th century some critics took note of the fact that famous calligraphers were often copied and faked. But their chief concern was that the copies were too poor to properly teach upcoming generations. The word zhen in the term zhen-ji or "true specimen" often meant "true to the original" rather than "genuine." Reproductions of famous calligraphies were treasured alongside with original works. When the famous Wang Xizhi Lan-ting manuscript was brought into the imperial collection of the Tang court, the Taizong Emperor immediately ordered ten replicas.

Reproduction for Access

Because they had none of our modern technology, the Chinese made reproductions by hand which were intended to be exact duplications of the original. Great paintings in Palace and private collections were only accessible to Court officials and very prominent people. Scholars and forgers alike had difficulty seeing the works. Never having confronted the original, a forger had to use his best guess. But if the forgers never saw the original, neither had the prospective buyers.

Self-Edification

The Chinese artist tried to capture the essence of an old master's art before considering his own creativity. Study of painting began with a search for ancient masterpieces to be used as models to study the master's method. But the resulting works often have a dry, uninteresting appearance and lack the power and mystery of the original.

Transformation

Although claiming to imitate, many artists in fact were unconcerned with fidelity to the original image or technique. Rather, they viewed the past as a creative challenge. Their goal was to transform the methods of their predecessors for their own creative ends.

How Forgery Differs

A forgery begins with the intention to deceive—either on the part of the maker or the dealer, or both. It would be safe to say that works of art have been counterfeited and forged for as long as they have been collected. A distinction should be made, however, between "reproductions" and "forgeries." Copies made for the purpose of study and practice are much more numerous. In the antique trade, however, these two kinds of copies merge.

Blurring the Difference

Artists Forging Themselves

There was a general attitude of tolerance or, indeed, willingness shown on the part of the great Chinese painters towards the forging of their own works. But that's not as unusual as it may seem. In the West, one has an image of Salvador Dali signing thousands of sheets of blank paper for fake lithographs. Even DeChirico was caught back-dating new pictures to a time when his work was more popular, in effect forging himself.

Artists Allowing Forgeries

Artists have also allowed others to benefit from their fame. When Shen Zhou was informed that imitations of his works were literally being made right at his doorstep, his answer was: "If my poems and paintings, which are only small efforts to me, should prove to be of some aid to the forgers, then what is there for me to grudge about?"

Forgery as Sport

In traditional China, collecting paintings was a game, especially among scholar-forgers. In the late Ming, popular fascination for art forgeries was celebrated in song, in poetry, and on the stage.

By Mi Fu's time (1031—1107), the prevalence of forgeries had come to be so familiar a fact of the collector's life that a "sportsman-like" attitude developed toward it among the connoisseurs.

Throughout, one finds an attitude of tolerance and amusement towards cleverness in forgery-making. Mi Fu himself borrowed ancient works and copied them, after which he would

(left) Figure 2. Fan Kuan (active ca.990-1030). *Travelers Amid Streams and Mountains*. Hanging scroll; ink and color on silk. 81¼ x 40¾ in. (206.3 x 103.3 cm). National Palace Museum, Taipei.

(right) Figure 3. Chen Lian (active early 17th century). Copy of Fan Kuan's *Travelers Amid Streams and Mountains*. 1 leaf from an album of 22 paintings entitled *To See Large Within Small*. Each leaf: 27⅝ x 15⅞ in. (70.2 x 40.2 cm).National Palace Museum, Taipei.

return the copy to the owner and keep the original. If someone pointed out the deception, Mi would have a good chuckle.

In the 20th century, detecting Zhang Daqian's (1899-1983) forgeries is like playing a complex game or sorting out a difficult multi-dimensional puzzle (Figs. 4 and 5). Like a treasure map, clues were planted in hard-to-read seals and inscriptions, which, when deciphered and identified, prove to match up with old, somewhat obscure records. Scholar-curators followed these clues with increasing excitement; they arrived at the conclusion Zhang intended them to, and felt pride in having uncovered a long-neglected masterpiece.

Forgery as Noble

Records kept by Zhou Lianggong, the major patron of the 17th century, reveal that the art of making forgeries could actually promote a painter's recognition. He felt, for example, that Wang Hui's imitations of Song and Yuan masters earned him great fame. Since the aim of studying art has always been for aesthetic cultivation not scientific knowledge, the ability to create a perfect forgery was a matter of pride.

Scholar Forgers

A great forger, unlike the ordinary forger, seeks to approximate in every formal and expressive detail the line and the shape of the work, the artist's materials, and his attitude. He penetrates into his subject's psyche to match all his "moves." He knows the period style as well as the phases of development of the target artist.

Only a scholar forger can paint many styles from many periods. Zhang Daqian could do so, commanding the styles of masters from the 8th through the 18th centuries. Zhang's career has no counterpart in the West. One would have to imagine a painter capable of executing Roman frescoes, Leonardo drawings, portraits by Vermeer, and landscapes by Monet to find the comparable range and mastery.

Less successful forgers, while competent in other respects, do not have an art historian's perspective of a particular artist's development; thus they frequently produce a work inconsistent with stylistic progressions.

Caveat Emptor

If a copyist antiques the paper or silk and adds spurious seals and inscriptions in order to sell, then the new work is considered a forgery both in the East and West. However, the notion of "buyer beware" is stronger in China than in the West. The victim becomes the object of criticism since he was not very clever.

Forgery by Collectors

Adequate Replacement

Art was often the casualty when Imperial Chinese Courts fled invading armies. Artists were later summoned to replace the paintings that were destroyed.

A Willing Delusion

As recently as 1984, a distinguished museum director in Taipei opened an exhibition of works of Shitao. Pointing to a very large scroll, he announced, "We have always exhibited this large work as a masterpiece by Shitao. Recently Zhang Daqian confessed to being its maker. We still display it here today because, as far as we are concerned, Zhang Daqian is Shitao."

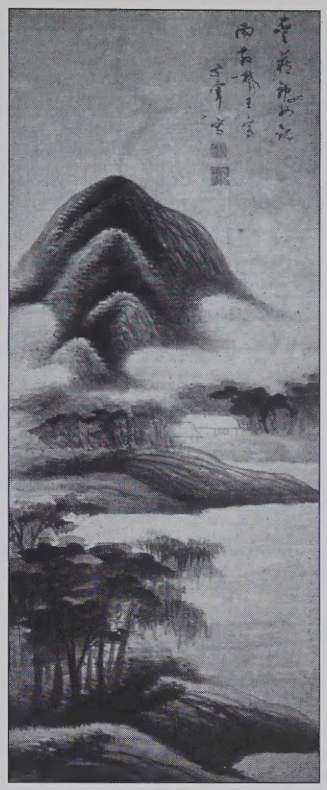
When beloved paintings are reattributed, we are saddened because we have made them into icons, and we have become the dupes of our own idolatry. Many people had never really examined the paintings as physical objects.

Forging One's Own Collection

In Shanghai during the late 1940's, a prominent collector set up a

Figure 4. Bada Shanren (1625-1705). *Four Geese*. Estate of Wang Fangyu and Sum Wai.

(right) Figure 5. Zhang Daqian (1899-1983). In the Style of Bada Shanren's *Four Geese*. Estate of Wang Fangyu and Sum Wai.



(left) Figure 6. Dong Qichang (1555-1636). *Landscape in the style of Mi Fu* (1052-1107).

(right) Figure 7. In the Style of Dong Qichang's *Landscape in the style of Mi Fu.*

workshop with the purpose of reproducing some two-dozen paintings from his collection. The copies resulting from this project were virtual replicas—suitable for selling.

An Endemic Problem

The Prevalence of Forgeries

One refuge of the forger is to offer works he claims were done by one famous artist in the style of another. So, for example, there are many forgeries of Dong Qichang, done in a style that is very different from his regular style (Figs. 6 and 7). Seeing one such, a viewer might say that it doesn't look like Dong Qichang, but that's because it was done when he was painting in the style of another.

Not only in the past were Court collections rife with forgeries. To this day, many of the scrolls ascribed to famous masters now in public and private collections are copies. Depending on the period and painter, between ten and twenty-five percent of Chinese paintings in some museums may be problematic. At auctions of Chinese painting, somewhere between twenty and fifty percent may be questionable. So well known is the practice of forging, that many professional forgers are even mentioned by name. In the Qing dynasty, for example, a family named Qin excelled in this practice.

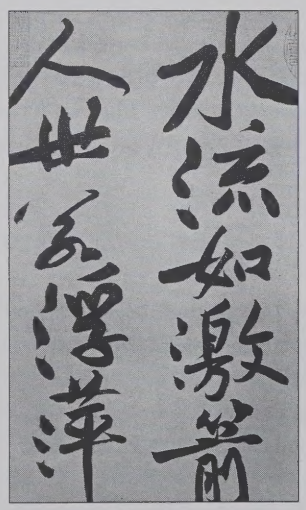
The calligraphy of the Ming artist Zhu Yunming was so popular that the Qing calligrapher Yu Ji (1738—1823) went so far as to say that all of Zhu's "mad" cursive writing had been forged. Unquestioning acceptance was replaced by widespread doubt. Collectors were left in a state of complete bewilderment.

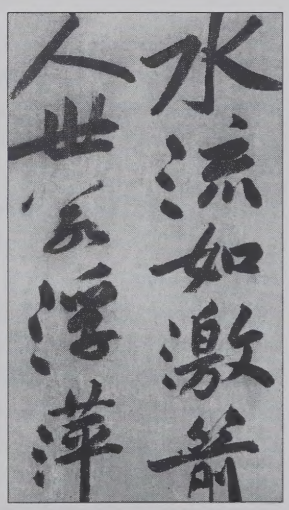
It's not just amateurs who make mistakes. In the first half of the 20th century, a dealer could not sell a Chinese painting to a museum unless he certified that it was of the Song Dynasty. As a result, many if not most of the paintings bought before 1960 at the Freer Gallery and Boston Museum of Fine Arts have had to be reattributed to later dates. When the Nelson-Atkins Museum mounted an exhibition in 1992 of the work of Dong Qichang, 35 of the paintings were probably not right. At a 1996 Princeton exhibition of Chinese flower painting, a forgery was inadvertently displayed on the catalogue cover.

The Difficulty of Telling them Apart

Most of the well known Chinese connoisseurs of former times had to struggle with the same difficulties and often experienced the same disappointments as we. As early as 470, Yu He had complained that in the collections of that time, "genuine works and forgeries were freely mingled, and people could not tell them apart."

From the 12th century onward, a scroll by Huang Tingjian was considered to be genuine (Figs. 8 and 9). Later, when it entered the Qing Imperial Collection, questions were raised by the Qianlong Emperor. He wrote: "This is an 'outline and fill-in' forgery. I formerly graded this object as the highest category. Actually it was a mistake." Actually, he had it right the first time.





(left) Figure 8. Huang Tingjian (1045-1105). *Three Poems by Hanshan and Pang Yun*, detail. Datable to 1099. Handscroll; ink on paper. National Palace Museum, Taipei.

(right) Figure 9. After Huang Tingjian (1045-1105) *Three Poems by Hanshan and Pang Yun,* detail. Handscroll; ink on paper. 89 x 12 5/16 in. (226.1 x 31.2 cm). The Metropolitan Museum of Art. Bequest of John M. Crawford Jr., 1988. 1989.363.170.

Hard as it is to separate real from a very good fake, once a fraud is recognized, everyone immediately sees the difference and can't understand how they could have been duped.

The Effect of Forgeries

The plethora of forgeries is a serious problem: they misrepresent periods and people and seriously distort our understanding of an entire culture. Another effect is that prices for art in those areas will remain low. It is the very certainty of authenticity which pushes up the prices.

A Role for Forgeries

But we should not dismiss forgeries altogether. They have always derived some of their respectability through a strange process of rationalization. Attributions accepted as genuine somewhere along the way acquire a kind of "functional authenticity." It is conceivable, for example, that we might arrive at a fairly accurate idea of the history of Chinese painting on the basis of copies. Like it or not, forgeries constitute a major part of Chinese art history.

"It's not just amateurs who make mistakes . . . . Many if not most of the paintings bought before 1960 at the Freer Gallery and Boston Museum of Fine Arts have had to be reattributed . . . . At a 1996 Princeton exhibition of Chinese flower painting, a forgery was inadvertently displayed on the catalogue cover."

Chinese Methods of Forgery

Free-hand Copy

There are several methods of forgery. One is Lin or "copying by sight," the most common form of copying technique in calligraphy and painting. The artist transfers the forms of the original by free-hand imitation without the aid of tracing or mechanical means, and does so with as little of his own idiosyncrasies or period style as possible.

Tracing Copy

This method, Mo, or tracing copy, seems also to have started quite early, probably no later than the 4th to 5th centuries. Traced copies, regardless of time interval, function as quasi-originals, like a photograph, since, quality aside, they provide relatively the most accurate picture of an original work. Using this technique, the artist places a sheet of paper over the model, and copies by tracing. The method has three subcategories, but no matter which is used, the result always appears flat and lifeless when put side to side with the genuine work.

Hard and Yellow (ying-huang)

This was probably an early form of "tracing" paper: with a hot iron one would apply hot wax to the surface. By permeating through, it made the paper translucent, ideal for making copies.

Tracing by Illumination (xiang-ta)

This particular method entailed placing the paper against the original, and holding it up to a bright window, facing the light.

Outline Tracing and Filling in (shuang-gou kuo-tian)

This special technique pertains only to calligraphy. With a fine brush, the shape of each original stroke is painstakingly outlined, then filled in. Even dry-brush or split-hair strokes are imitated. When employed expertly, this method produces the most accurate duplication of all the ancient means of reproduction. However, in these copies the ink tone is unnaturally uniformly black.

Imitation

Fang, or imitation, is a method which involves a slightly greater degree of personal interpretation than the previous methods. These were often made by students and close followers who, nurtured on the old master's original style, contribute minor innovations of their own.

Invention

In this technique, the copyist is sufficiently removed from the old master in time as to unwittingly introduce into the painting many anachronisms of his own period and personal style. It is therefore called "zao" or invention.

With this method, a copyist takes on the style of an ancient master to paint a "new" work instead of reproducing something from the master's actual works. There is no intention to reproduce a likeness, but rather to create a "new" work, a creative reinterpretation. The brushwork is freer than in the previous methods, giving the impression of creative inspiration and spontaneity.

Adaptation

In an adaptation, the artist takes considerable liberty in his imitation of the pictorial elements, aiming, as it were, only at the general "spirit" of the original picture.

Carving Copies

Ke-tie ("carved reproductions") refer to the "rubbings" taken from carved surfaces of either stone or wood. The most important difference between ke-tie and the preceding methods of reproduction is that, while the others result in black-inked characters against a white ground, ke-tie reproductions result in white characters against a black background, and thus cannot be confused with the original.

Types of Forgeries

Soaked Through and Peeled Off Copies
A "peeled" second layer is possible when the original work was written or painted on paper which consisted of two layers as a single sheet. When used for calligraphy, the ink naturally soaks through from the first to the second layer, but the ink tone on the second will be paler.

The process begins innocently enough: when an original is damaged, the mounter must remove the bottom layer. Sometimes, the soaking process often loosens the glue which originally laminated the two layers together, whereupon the second layer may be peeled off. The result is then half-genuine and half-forged.

Cut Down and Split-Up Copies
Split-up pictures are difficult to detect. Most dealers have good eyes and are skillful in selecting the parts of the scroll that will, by themselves, form a satisfactory entity and then write on it the name of some famous artist.

Recombination
Some dealers also produce combination pictures, in which elements of different paintings are used to create a new painting, a pastiche. The forger is careful to cover over such "combination pictures," masking the spots where the component parts are joined together.

Accretions
Accretions are additions to paintings over time which interfere with the original work of art. These additions to the old master's oeuvre were far removed from the basic stylistic, technical or expressive framework of the original old master. In fact, there are so many reproductions, far outnumbering the real ones, that these have become the real image of the artist to most followers' and forgers' eyes. So the standards for works attributed to the master were increasingly lowered.

Ghost-painting
The Chinese term for ghost-painter is daibi, which means "substitute brush." This practice began in the Song but accelerated during the Ming as demand for paintings by well-known literati led to a situation where they were always under duress to produce more. Men like Shen Zhou and Dong Qichang were prominent intellectual and social leaders as well as famous painters. As "gentlemen-painters", they were not supposed to accept any fee for their artistic work. Unwilling and unable to bother with doing so many requests, they received help from others, to which they would just add their signature.

This was especially true of Yinchou hua, paintings which were to be presented as gifts to officials and emperors for one's own career advancement. Masterpieces by renowned artists were required and, if they were not available, they just had to be produced.

Orphaned Works
There is a special problem with guben or a "lone extant work" attributed to a particular painter. It is a methodological paradox: without knowledge of styles how can we judge the authenticity of individual works, and without convictions about authenticity how can we form concepts of style? Forgeries of obscure artists are infrequent because there is little market for them. Collectors may therefore strive to acquire a so-called guben, on the assumption that it is most certainly genuine. But the astute forger, one step ahead of the innocent collector, may turn this situation to his own advantage. He will daringly fabricate a complete artistic personality—with attendant inscriptions, colophons and seals—fulfilling perfectly the guben criteria.

How to Differentiate Forgeries

How does one differentiate forgeries? Certainly, one should notice the dry and mechanical brushwork of the copyist; when a forger imitates, he merely seeks verisimilitude of shape, and is unable to determine what lies behind the original conception. Richly modeled rock formations, for example, get turned into an array of flat, overlapping surfaces, a two-dimensional, decorative pattern. Professional forgers will often fail to recognize the "common denominator," the subtle elements that identify a master. They have neither time nor the inclination to study the works of each master.

"The reliance on so-called 'objective' kinds of tests is not a very good way to judge Chinese painting—it only makes one vulnerable to forgeries of such criteria."

Using "Objective" Criteria

So, why not detect forgeries using objective criteria? Simply, because it is not possible to prove authenticity, if by proof is meant scientific, independently verifiable evidence or the testimony of an eyewitness.

The reliance on so-called "objective" kinds of tests is not a very good way to judge Chinese painting — it only makes one vulnerable to forgeries of such criteria. "Objective" criteria, far from being the defining method, are, in fact, less valuable than the "subjective" eye of someone who knows what he is looking at. This is the difference between information and judgment. But if one has no eye, objective evidence becomes the only way of looking at art. That is why people use the documentation they understand, even if it is not pertinent.

Signature
An artist's inscription, like the painting itself, could be imitated. There are many kinds of combinations, including a genuine painting with a forged signature. When a real painting has not been signed by the artist (presumably because he did not want to appear to be making a living from painting), the seller will attach a false signature.

Artists' Seals
Because seals were invented and used to provide proof of authenticity, they were, ironically, always subject to fraud. For every measure taken to inhibit forgery, there was often a countermeasure to circumvent it. When trying to sell a painting, it was the better part of wisdom for the seller to ensure that his offering was complete with reassuring artists' signatures and seals.

Not only could seals be easily forged, there was nothing to prevent genuine seals from falling into the hands of the forgers or dishonest dealers. Even today, it is easy to find in the markets of Hong Kong genuine seals that were used by well-known artists. To try to establish a baseline for their authentication, many seal books were published, but unfortunately many seals in them are fake—some coming from questionable paintings. Today the situation is even more problematic because the advent of computerized etching has made it possible to have reproductions faithful down to the tiniest detail.

Collectors' Seals
The abuse of collectors' seals includes the use of genuine seals by forgers on fakes. Sometimes a genuine painting may also bear forged seals of collectors. Although genuine seals on a work of art may help the connoisseur in the dating and history of a work, they must be viewed with caution.

Artists' Colophons
Any allusion or dedication in the painter's inscription to well-known historical persons or localities should give cause for caution. Chinese collectors like nothing better than such interesting enhancements, and forgers at all times have been only too willing to oblige them.

Friends' Colophons
"Friends' colophons" are usually written at about the same time as the picture is painted or the autograph written; they are composed by friends or acquaintances of the artist. Forgeries of such colophons are difficult to produce.

Collectors' Colophons
In the case of collectors' colophons, one will find fake combinations in all their variations. Colophons can always be added at a later date to enhance the feeling of authenticity. They become useful additional tools to anchor an artwork's date or provenance, but only once questions about authenticity have already been answered.

Ink
One must not assume a forger has to be a technical genius. This view may be justified in the case of antique Western paintings where pigments might be subjected to spectroscopic analysis. But in China, the brushes, ink, and paper have changed little in a thousand years. Furthermore, a forger can purchase genuine Ming dynasty ink cakes quite easily.

Silk and Paper
Gao Shiqi recorded in detail the measurements of authentic silk and paper of the Song dynasty, so as to put an end to the wiles of crafty dealers. Since then forgers have followed exactly these given measurements in preparing their silk or paper. Furthermore, in a country like China, it is not difficult to acquire blank sheets of antique paper and silk actually created long ago.

Books
The average Chinese has a weakness for catalogues of private collections. But it never occurs to him that the person who compiled the record book did not always have unfailing judgment. The mere fact that a picture is in the Palace collection does not imply that it is a genuine, nor that it is of superior quality; many items were accepted and listed merely because of the official status of the donor, or at an Emperor's whim. At the same time, many important paintings have never been recorded.

Conclusion

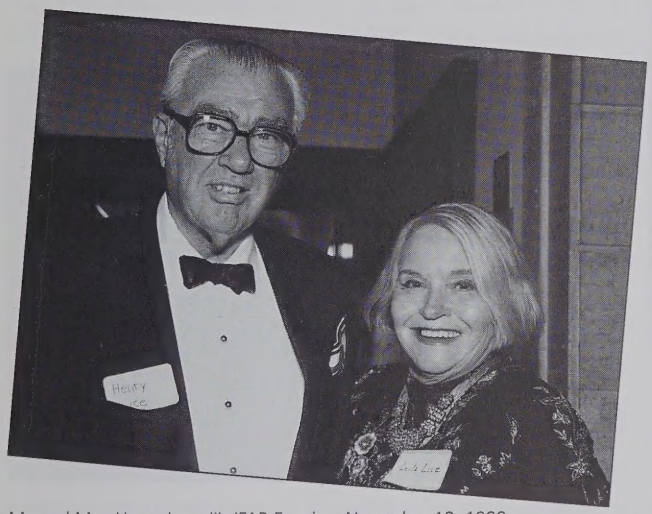
In China, the role of forgery, especially of Chinese paintings, has always been seen in a far vaguer and less clear-cut light than in the West. Most Chinese are grateful to the forger for preserving early art works so that they can be seen today in a sufficiently real form. Most also think that if you buy a fake thinking it is real, then that is your own fault. Many also cannot tell the difference between real and fake and don't really care so long as their friends are impressed. And certainly Chinese connoisseurs don't want to clarify the situation, if only because of the intellectual fun it creates when every new supposedly early Chinese painting surfaces.

It is not surprising, therefore, that many forgeries are presented for sale at auction houses and that many have outwitted museum curators. But those collectors who look with their eyes and not with their ears have an excellent chance of finding great early art at an affordable price.

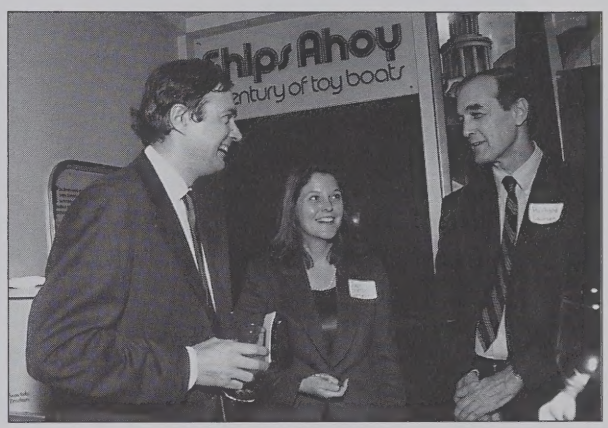
H. Christopher Luce
Director, The Henry Luce Foundation

AN IFAR EVENING . . .

IFAR Evening at the Forbes Magazine Galleries, November 18, 1999.

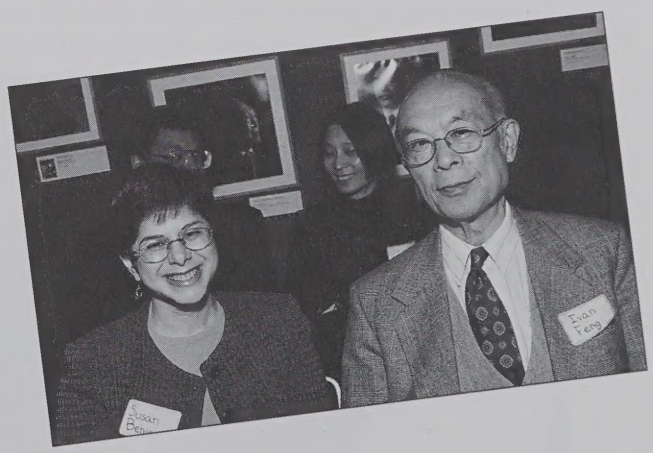


Mr. and Mrs. Henry Luce III. *IFAR Evening*, November 18, 1999.



H. Christopher Luce, Joan Breton Connelly, and Richard Laursen. *IFAR Evening*, November 18, 1999.

Barbara Ford, Curator, Asian Art Department, The Metropolitan Museum of Art, and Valrae Reynolds, Curator of the Asian Collections, The Newark Museum. *IFAR Evening*, November 18, 1999.



Susan Beningson and Ivan Feng, *IFAR Evening*, November 18, 1999.

Calder's Artistic Development and Authenticity
An *IFAR Evening* with Sandy Rower

On April 4, 2000, Alexander S.C. (Sandy) Rower, Director of the Alexander and Louisa Calder Foundation and grandson of the noted artist, addressed an IFAR audience on "Calder's Artistic Development and Authenticity" (Fig. 1). In attendance were Calder's family and friends, as well as a broad spectrum of art professionals, journalists, attorneys, collectors, and, notably, members of the FBI and other law-enforcement agencies, with whom the Calder Foundation works to curtail the spread of Calder forgeries (Figs. 2–4).

The Calder Foundation, established in 1987, is in the process of preparing a catalogue raisonné of Calder's works. Thus far, it has

Figure 1. Alexander S. C. (Sandy) Rower, *IFAR Evening*, April 4, 2000.

Figure 2. Sandy Rower speaking with Professor Joan Marter, Calder scholar. Lee Munson in rear. *IFAR Evening*, April 4, 2000.

Figure 3. Left to right: David Nash, art dealer; Vincent McGee, Vice President, Irene Diamond Foundation; Dorothy Lichtenstein, President, Roy Lichtenstein Foundation, Sharon Flescher, Executive Director, IFAR. *IFAR Evening*, April 4, 2000.

Figure 4. Artist Dorothea Rockburne, left, with Dorothy Lichtenstein, *IFAR Evening*, April 4, 2000

"The Calder Foundation . . . is in the process of preparing a catalogue raisonné of Calder's works."

documented more than 17,000 objects in all media, including painting, sculpture, jewelry and household items. Although originally scheduled to be completed in 1998, cataloguing is ongoing, and no date is being given for its completion. In the meantime, the Foundation has established a Web site with useful information. The Foundation also offers an authentication process and meets monthly to review works. Mr. Rower provided insight into that process, as well as into the scope and nature of Calder forgeries. All this, within a framework of Calder's artistic development.

The presentation was divided into three parts: a very personal overview of Calder's development; then a discussion of Calder forgeries, replete with a description of one forger, Emmanuel Marin Fernandez, aka: Giuseppe, Joe, Juan, Manuel, or Manny, who, with his wife, Monica, alias Francesca, Maria, Marissa, or Andrea, both using a variety of last names, including Cisneros, Hernandez, Rodriguez, and Sauvignon—with and without the "u," concocted ingenious schemes to fool collectors and professionals. The couple were arrested, pled guilty, and are awaiting sentencing. Part three was devoted to audience questions, including several about the forgeries, which, Mr. Rower made clear, he had never before "spoken about . . . publicly." But because he had been so impressed with the audience at a previous IFAR talk, he made an exception for IFAR.

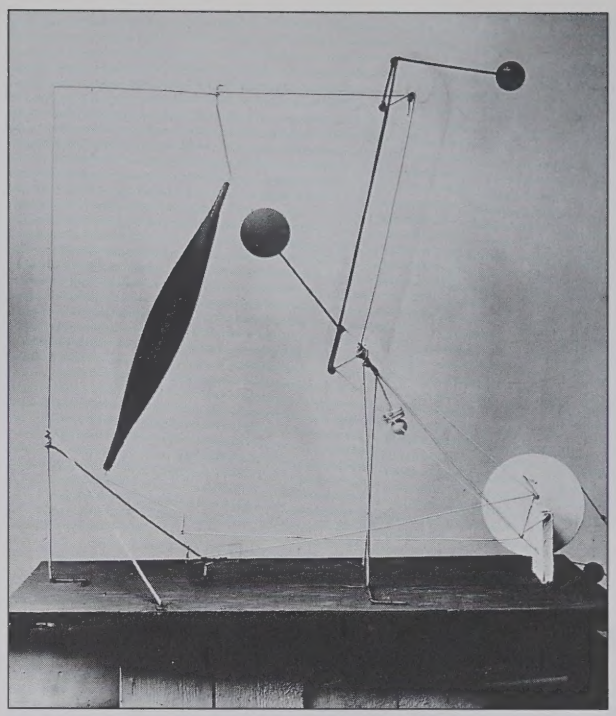


Figure 6. Alexander Calder, *Untitled*, 1931. 36" x 36" x 12". Wire, wood, paint, and motor. Calder's first "mobile." © 2000 Estate of Alexander Calder / Artists Rights Society (ARS), New York.

CALDER'S DEVELOPMENT

Mr. Rower showed a series of slides outlining Calder's early development. Noteworthy, was a brass sheet *Duck* (Fig. 5), made in 1909 as a present for his parents when Calder was only eleven. It revealed pencil lines where he, precociously, pre-conceived the geometry of the figure. A group of early wire sculptures—*Josephine Baker, The Circus, The Horse Rider*—showed Calder's attempts to define gesture and motion in fixed wire. Calder's progression toward abstraction was, according to Mr. Rower, spurred on by a visit to Mondrian's studio, where he was struck by rectangles of painted paper that Mondrian had hung on the studio wall. These triggered in Calder an urge to make the rectangles oscillate, but the suggestion did not appeal to Mondrian.

From a discussion of Calder's early gestural pieces, Rower progressed to his first mobile, a title given by Duchamp to a Calder work whose location is unknown today (Fig. 6). As Rower described it, Duchamp visited Calder's studio when the work was still wet from painting. Duchamp touched it, and Calder asked his opinion as to what he should call that work and also his other motorized sculptures. Duchamp came up with "mobile," which, in French, refers to both motion and motive. Calder liked the pun, and the name stuck. Thus developed Calder's concept of making a painting—or sculpture— in motion, with elements oscillating within a frame, a concept Calder brought to its apex with *The Red Panel* of 1936, an enormous nine foot work that was exhibited recently at the National Gallery's Calder retrospective.

Rower treated the audience to a series of archival slides showing mobiles,

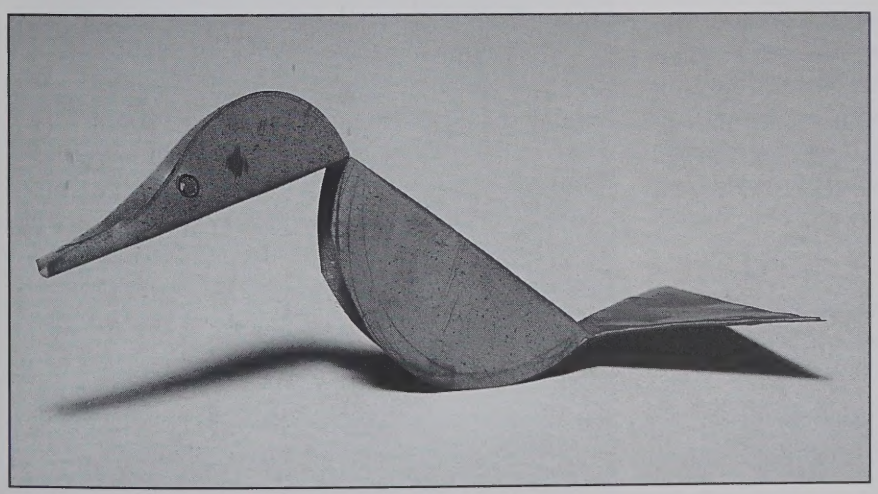
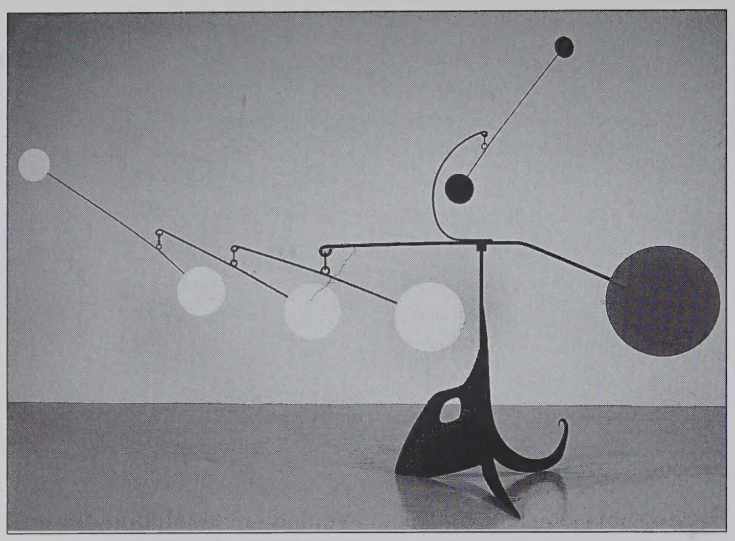


Figure 5. Alexander Calder, *Duck*, 1909. 1 3/4" x 4 1/4" x 2". Brass sheet. © 2000 Estate of Alexander Calder / Artists Rights Society (ARS), New York.



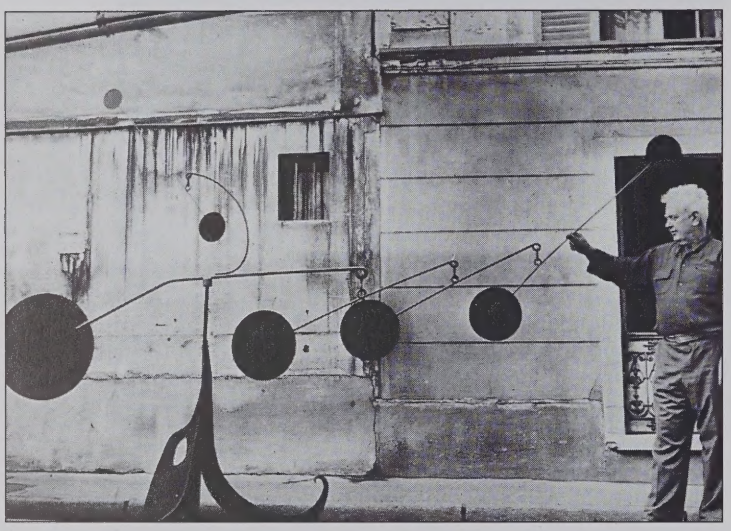


Figure 7. (top, left) Alexander Calder, *Myxomatose*, 1953. 101" x 161"; base: 52½" x 41". Sheet metal, rod, and paint. © 2000 Estate of Alexander Calder / Artists Rights Society (ARS), New York.

Figure 8. (bottom, left) Alexander Calder with *Myxomatose*, Paris, 1954. Photograph by Agnès Varda. © 2000 Estate of Alexander Calder / Artists Rights Society (ARS), New York.

stabiles, and large monumental sculptures, including *Myxomatose* (Figs. 7 and 8), a welded sculpture made in Aix en Provence in 1953. It was conceived by Calder without a preparatory maquette. He drew with chalk directly on the steel, which was then cut out, welded, and assembled. Rower's overview ended with a monumental, yet delicate industrial steel work called *Grand Crinkly*, now in Korea. This work was the springboard to a discussion on caring for Calder's outdoor pieces, which need to be maintained and painted. The Calder Foundation is often asked whether Calder's works can be repainted. The answer is "yes," but carefully and appropriately, with the right paint, finish, color and so forth. It is not true, Rower noted, that a work that has been restored and repainted will be rejected from the catalogue raisonné, so long as it has been done appropriately.

CALDER FAKES

After his overview, Rower moved into the second, particularly intriguing, part of his talk devoted to Calder forgeries, of which there were many in the past, but which are no longer much of a problem.

Mr. Rower's tales of the forgeries were both amusing and chilling. The ingenuity displayed by the forgers in several instances was rather remarkable. In a series of slides juxtaposing real and fake works, the audience was treated to a lesson in connoisseurship and caution. As noted above, Mr. Rower highlighted the forgeries perpetrated by one husband and wife team, known under several aliases, but whose real name seems to be: Mr. and Mrs. Emmanuel Marin Fernandez. Manny, as he is known to Mr. Rower, is a failed artist. Faking Calder works is more lucrative.

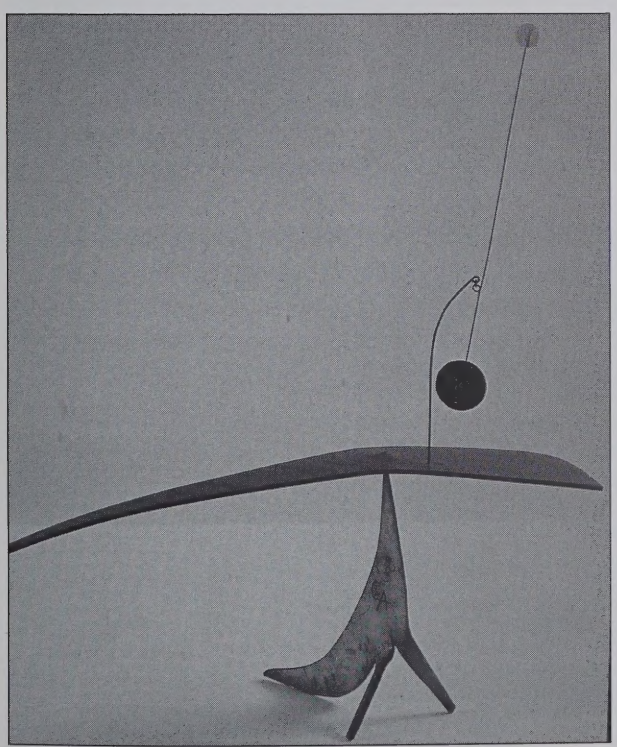
"It is not true, Rower noted, that a work that has been restored and repainted will be rejected from the catalogue raisonné, so long as it has been done appropriately."

One scheme described by Rower concerned a Calder sculpture of 1958, *Dumbbell on a Davit* (Fig. 9). It belonged to a Manhattanite whose upholsterer had access to her apartment for a few weeks while she was travelling. During that time, the work was temporarily removed from her apartment, and inspired a series of fakes—twelve or thirteen are known—based on the original (Fig. 10). But, there was a hitch. When the original was returned, it was only returned in part. That is, it had a fake base with the real top, whether intentionally or not. That hybrid is still in the woman's possession.

The same owner possessed another Calder, which was too large to remove from the apartment. So the forger drew a diagram of her original, copied the work, and then made three other fakes in the same style. Some have variations. One that Rower showed had different colors.

Still another forgery was based on a photograph of a sculpture in an auction catalogue. The forger didn't realize that the base had

"When the original was returned, it was only returned in part . . . It had a fake base with the real top."



been made out of a metal paint sample card. In the original, the reverse side of the base actually contains the salesman's description of the gray paint that he wanted to sell to Calder. Calder simply cut the paint chip, bent it, and made a base out of it. The forger, having no idea what the original base was, made various mistakes in copying the composition. The forger also misunderstood a hole in the paint sample that was originally intended for hanging the chip. In the catalogue, the hole on the base looked like a dimple, so that is what he made. There are three other forgeries in a similar vein, with different color combinations.

This was not the only example of a Calder forgery inspired by an auction catalogue. Rower showed a fascinating group of forgeries based on two original standing mobiles: *Heron* and *Two-Toned Moon.* A dealer inadvertently swapped the top half of one work for the other, and then sold them

"A dealer inadvertently swapped the top half of one work for the other, and then sold them both. . . . One of the works came up at auction. . . . The forger created a forgery based on the mismatched pieces, which he could only have seen published in the auction catalogue . . ."

both. The Calder family noticed the mistake when one of the works came up at auction. They bought the work and switched the top with the top from the second piece, making the two works whole again. But, in the interim, the forger had created a forgery based on the mismatched pieces, which he could only have seen published in the auction catalogue, since that is the only photograph of the mismatched configuration. As if additional proof were needed that the auction catalogue inspired the forgery, Rower pointed out that the original *Two-Toned Moon* is so named because only one side of its moon-shaped top is red. But the forger made both sides of *his* copy red, since the auction catalogue had only shown one side.

Figure 9. (top, left) Alexander Calder, *Dumbbell on a Davit*, 1958. 17" x 15". Sheet metal, brass, wire, and paint.© 2000 Estate of Alexander Calder / Artists Rights Society (ARS), New York.

Figure 10. (bottom, left) Copy of *Dumbbell on a Davit,* 1958. No dimensions available. Sheet metal, brass, wire, and paint. © 2000 Estate of Alexander Calder / Artists Rights Society (ARS), New York.

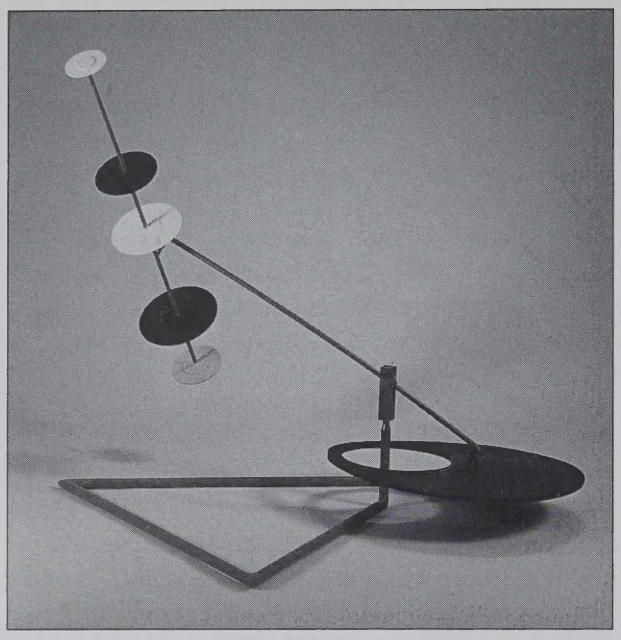


Figure 11. Untitled (Copy of *Un Blanc, quatre noirs*), 1967. 83 1/2" x 98" x 61 3/4". Sheet metal and paint. Accompanied by a phony photo-certificate from the foundry.© 2000 Estate of Alexander Calder / Artists Rights Society (ARS), New York.

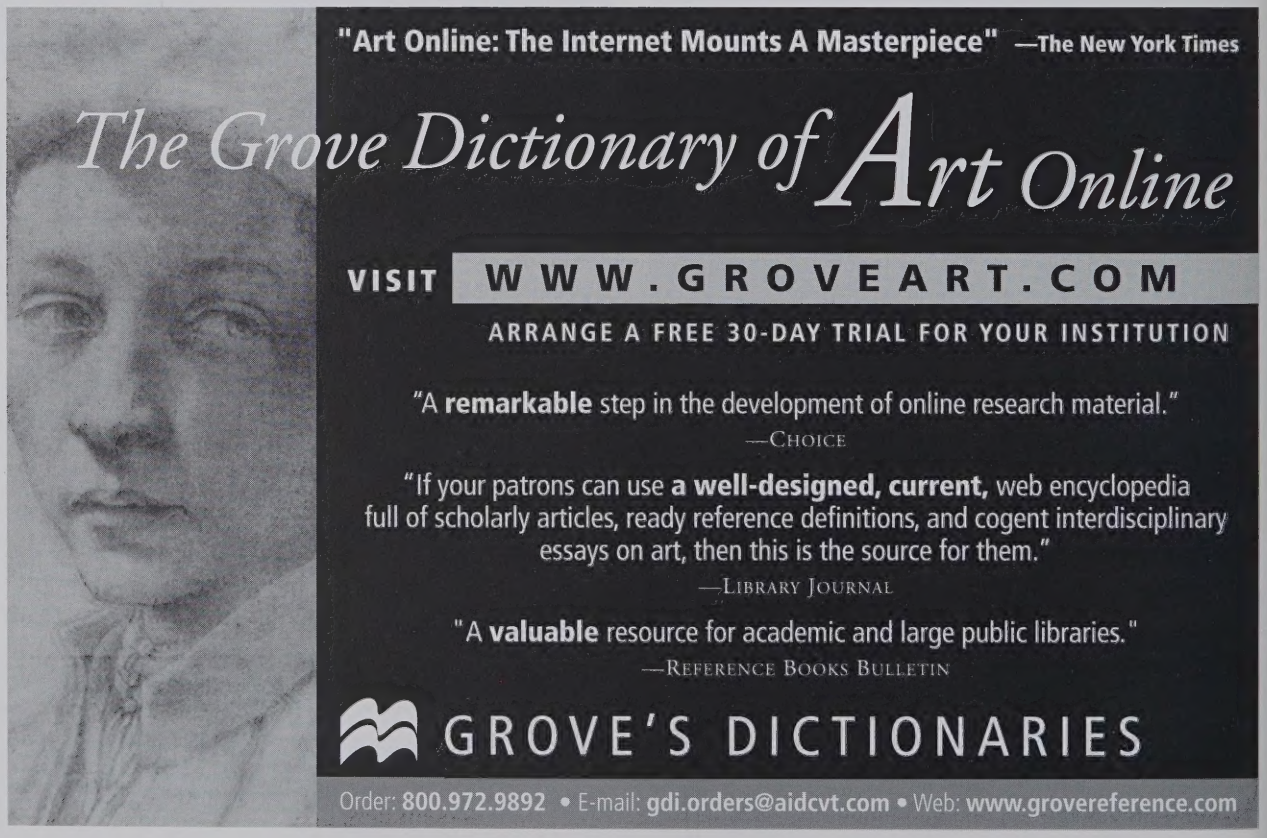
Another of the same forgers' tricks was to purchase an authentic Calder at auction, copy it, and then, with all the documentation they received with the purchase of the authentic work, present the fake for sale at another auction house. Sometimes, as with *The Eye in the Black*, they were caught. Still another trick was to try to sell one original along with two or three fakes; or to finagle photo-certificates authenticating fakes from someone in the original foundry that fabricated Calder's sculptures (Fig.11).

Manny the forger is a sculptor in his own right, and the IFAR audience was shown a few of his works, exhibited and sold as his. But the audience was also shown some of Manny's works juxtaposed with Calder forgeries by another active forger, whom Rower declined to identify. They were shown to make the point that, when juxtaposed, the better forgery looked like an authentic work in comparison. In Rower's words, "the worst thing that can happen to an artist is to have a forger make a fake, have that fake be hung in a museum and be respected as a work by that artist, and then to have a second forger make a copy of the first forgery. . . Then you have intelligent curators and scholars looking at the two works . . . and saying: "Well, the one in the museum (or elsewhere) is superior and, thus, must be the real one . . ." This is a sort of reverse authentication," and is devastating for the artist.

With that, Mr. Rower ended his formal talk and opened the program to almost an hour of questions before adjourning for the reception.

Sharon Flescher

. . .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A Legal Decision in New York Gives Experts Protection for Their Opinions on Authenticity

A recent decision of a Justice of the New York Supreme Court,[1] provides significant protection to art scholars and other experts who render opinions on the authenticity of works of art.[2]

In 1929, the art dealer, Sir Joseph Duveen, paid $60,000 in an out-of-court settlement for expressing his opinion that, having seen a photograph of a supposed Leonardo da Vinci painting owned by Mrs. Andrée Hahn, the real *La Belle Ferronnière* was "in the Louvre."[3] Duveen's quip "forever" established "in the minds of many people that opinions are dangerous things to give."[4] Indeed, experts ever since have been concerned about their liability for rendering opinions on the authenticity of a work of art. This long-held, wide-spread fear has inhibited experts from expressing their opinions, even informally and verbally, even where the matter (for example, a major museum purchase) is of significant public interest.[5] Their concern is that they will be sued for product disparagement, negligence, breach of contract and perhaps defamation.

One important consequence of this fear of claims is that scholarly publication and expert comment is inhibited and the distribution throughout the art world of fakes, misattributions and imitations by the dishonest, careless or uninformed is thereby facilitated. Some relief, however, may be at hand.

In *Lariviere v. E. V. Thaw, The Pollock-Krasner Authentication Board, et al.*, the Court held that an owner of a painting, alleged to be by Jackson Pollock, could not sue a group of experts, who had formed an Authentication Board to render opinions on the authenticity of works said to be by Pollock. The owner had signed the Authentication Board's application containing an agreement not to sue the experts for their opinion. Significantly, the Court also ordered the plaintiff to pay the costs of the experts' legal defense, and, as well, in a highly unusual action, ordered financial sanctions against both the owner and his lawyer for having brought a frivolous action.

This is the first time, to this author's knowledge, that a court has ordered monetary sanctions in a case involving authentication. The existence of this precedent may encourage courts in the future to impose sanctions in appropriate cases. Clearly the threat of such court action should have an inhibiting effect on frivolous claims by disappointed owners over negative opinions about the authenticity of their works of art. The useful consequence will be that the scholarly and expert art community should feel itself more free to give and publish careful, appropriate opinions with a much reduced fear of claims.

"... The court held that an owner of a painting, alleged to be by Jackson Pollock, could not sue a group of experts who had formed an Authentication Board to render opinions on the authenticity of works said to be by Pollock."

The Case

The facts of the case are these. In 1994 Kenneth Lariviere, (the "owner" or "plaintiff"), a resident of Vancouver, British Columbia, contacted The Pollock-Krasner Authentication Board to have the Authentication Board examine his painting, entitled "Vertical Infinity", which he believed was by Jackson Pollock (Fig. 1). He signed the Authentication Board's standard form of

Figure 1. *Vertical Infinity*. Oil on canvas, 11" x 26". Submitted to the Pollock-Krasner Authentication Board in 1994.

1. *Lariviere v. E. V. Thaw, The Pollock-Krasner Authentication Board, et al.*, Supreme Court, New York Co., Decision, index no. 100627/99, June 26, 2000; Emily Jane Goodman, J.

2. The decision concerns visual art, but the legal analysis is applicable to expert opinion on authenticity in other areas as well.

3. *Hahn v. Duveen* 133 Misc. 871, p. 872; 234 N.Y.S. 185 (Sup. Ct. N.Y. Co. 1929).

4. T. Stebbins, "Possible Tort Liability for Opinions Given by Art Experts," in F. Feldman and S. Weil, *Art Law: Rights and Liabilities of Creators and Collectors*, vol. II (Boston, 1986), p. 519.

5. Duveen's opinion was volunteered to a news reporter but in subsequent years the art community applied his lesson to circumstances where expert opinions were solicited by owners.

application and agreement which provided that the owner:

> is requesting The Pollock-Krasner Authentication Board to give [the owner] an informal opinion on the probable inclusion of the work described below in the planned catalogue (or catalogue supplement) for the works of either Jackson Pollock or Lee Krasner.

The application and agreement further provided that the owner:

> agree[s] to hold the Authentication Board and its Directors and Officers in their representative and individual capacities harmless from any liability towards [the owner] or others because of its rendition of an opinion (or its refusal to render an opinion).

A part of the application contained questions, the answers to which were completed by the owner. In response to the question, "How Acquired," the owner wrote: "through the estate sale of the late Mrs. Frederick Schwankasky." (Frederick Schwank*o*vsky was Pollock's art teacher in the late 1920's in a Los Angeles high school.)

The Authentication Board advised the owner that it had examined the same painting in 1993 when it was submitted by another owner for authentication, but that the Authentication Board was willing to examine the painting again if the owner wished it to do so. Upon examining the painting, the Authentication Board again concluded, unanimously, that it was not by Pollock and so advised the owner. The owner sent letters to the Authentication Board arguing that his painting was authentic. He also provided an affidavit of Schwankovsky's son stating that the son had been present when his father received the painting in the mail in 1953, at which time his father exclaimed, "Jackson Pollock has sent me a painting from New York," and that Schwankovsky had told his son that the painting was "typically Pollock." Notwithstanding, the Authentication Board advised the owner that if he wished to continue his efforts to obtain expert opinion authenticating his painting, he should address other Pollock experts to obtain their opinion.

The owner sued the Authentication Board and its individual members[6] in January 1999 alleging that they had failed to maintain a standard of care imposed by law. He sought monetary damages, as well as an order for the Authentication Board to publish a supplement to the Pollock Catalogue Raisonné including "Vertical Infinity" as a work by Pollock.

The Authentication Board moved for summary judgment against the owner, arguing that the application and agreement the owner signed in 1994 held the Authentication Board harmless from liability to the owner, based on the Authentication Board's opinion. The Board also counterclaimed that, in bringing the action, the plaintiff had breached his contract with the Authentication Board not to sue and was liable for damages (legal fees and expenses incurred in defending against the plaintiff's claim) for breach of that agreement.

The Authentication Board also took the position that the plaintiff could not use the courts to compel the Authentication Board to change its opinion. If the plaintiff wished a different opinion, he would have to address other Pollock experts and attempt to persuade them that his painting was authentic.

The Authentication Board also moved for sanctions against plaintiff and his lawyer under Part 130 of New York Rules of Court which provides for sanctions for frivolous conduct. Conduct is frivolous under Part 130 if:

> it is completely without merit in law; ... or ... it asserts material factual statements that are false ... In determining whether conduct undertaken was frivolous, the court shall consider among other issues ...whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.

In addition, 22 N.Y.CRR 130-1.1a (b) states that:

> By signing a paper, an attorney or party certifies that to the best of that person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the presentation of the paper or the contentions therein are not frivolous ..."

The Decision

The Court held that the written agreement between the owner and the Authentication Board, "by its terms, clearly bars this action."[7] Thus, Justice Emily Jane Goodman granted the Authentication Board's motion for summary judgment, dismissing both the plaintiff's claim for damages and his request for a court order requiring the Authentication Board to publish the painting as authentic. The plaintiff could not avoid his agreement not to sue. As the Court stated:

> Where the language of the exculpatory agreement expresses in unequivocal terms the intention of the parties to relieve a defendant of liability for defendant's negligence, the agreement will be enforced.[8]

6. E. V. Thaw, William S. Lieberman, Ellen G. Landau, and Francis V. O'Connor.

7. Id. at p. 6.

8. Id. at p. 5.

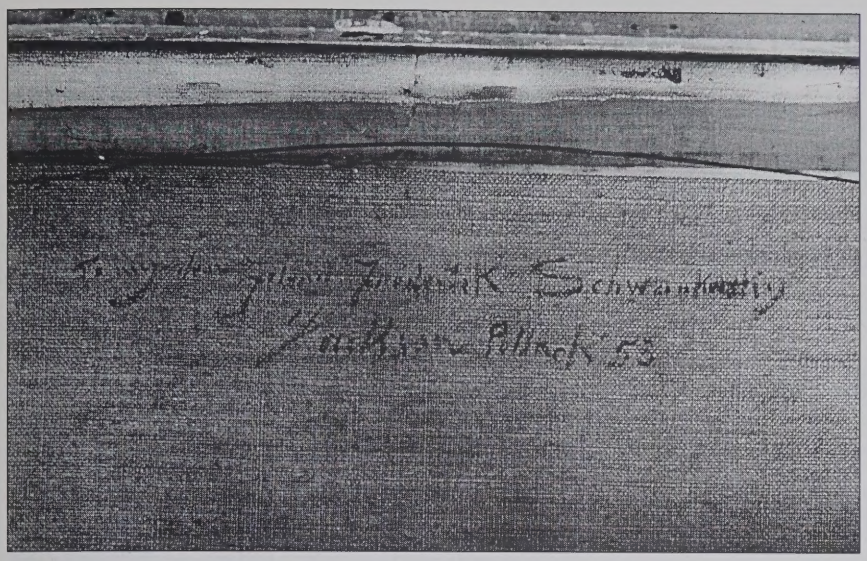

Figure 2. (left) Inscription on the back of *Vertical Infinity*.

Figure 3. (below) Detail of signature on *Vertical Infinity*, bottom center.

Justice Goodman also granted the Authentication Board's counterclaim for damages for the owner's breach of his agreement not to sue the Authentication Board for its opinion, stating:

> ... defendants clearly are entitled to judgment on their contractual indemnity claim involving plaintiff's written agreement to hold defendants harmless from any claim arising from their evaluation of the painting.[9]

The Justice also imposed sanctions of $1,000 each against both the owner and his lawyer on the grounds that the claim was frivolous within the meaning of Rule 130.1(a)(i) of the Uniform Rules since the action was "completely without merit in law or fact and cannot be supported by any reasonable argument for an extension, modification or reversal of existing law."[10]

"The Justice also imposed sanctions of $1,000 each against both the owner and his lawyer on the grounds that the claim was frivolous . . ."

The Authentication Board had argued that the owner's action was frivolous, first, because the Authentication Board's application signed by the owner clearly provided that the owner agreed not to sue over the Authentication Board's opinion and second, because the owner had no reasonable factual basis for believing that the painting was by Pollock. While Justice Goodman did not expressly articulate the latter argument, in reaching her decision she did note factors directly related to the authenticity of the painting. For example, she noted that an inscription addressing the alleged donee of the painting on the back of the painting misspelled Pollock's name as well as that of the donee (Fig. 2). And, in reviewing the provenance of the painting alleged by the owner, the court noted that "no estate tax was ever paid on a valuable Pollock painting by any member of the Schwankovsky family," and that the painting was purchased "as a facsimile at an auction for $4,000 Canadian, "as is".[11] Another factor related to the authenticity of the painting which the Court noted was that the owner's expert, who had opined, based on handwriting analysis and signature comparisons, that the signature on the face of the painting was by Pollock (Fig. 3), had made his com-

9. Id . at p. 6.

10. Id. at p. 8. Originally $10,000 in an earlier decision by Justice Goodman, but, on motion, reduced by Justice Goodman to $1,000.

11. Id . at p. 4.

parisons entirely from photographs of signatures, not from the paintings themselves.

Finally, also with respect to sanctions, the Court noted that, prior to the institution of the lawsuit, legal counsel to the Authentication Board (the author of this essay) met with the owner's lawyer to ask if there were proof of the authenticity of the painting or any law to support the denial of the agreement in which the owner agreed not to bring the instant lawsuit. The Court stated:

> Upon being informed that there was no expert opinion declaring the painting genuine and no law to avoid the written agreement, defendants' counsel warned the plaintiff's counsel that if suit were instituted, sanctions, counsel fees and costs would be sought. The plaintiff and his attorney apparently decided to risk going forward given the potential value of a genuine Jackson Pollock.[12]

" . . . the same court has [now] held that an expert whose opinion is solicited can protect himself with a 'hold-harmless' agreement and a court will enforce it . . ."

Thus, seventy years after the New York Supreme Court, in *Hahn v. Duveen,* triggered concerns among experts about rendering opinions on works of art, the same court has held that an expert whose opinion is solicited can protect himself with a "hold-harmless" agreement and a court will enforce it, thereby providing scholars and other experts reason to feel that real legal protection is available for the expression of appropriate opinions on the authenticity of works of art.

Ronald D. Spencer, Esq.

Partner, specializing in art law and art authentication matters at De Forest & Duer.

Co-editor, with Francis V. O'Connor, of a book on authenticity in the visual arts, The Expert v. the Object, *to be published by Oxford University Press.*

12 Id. at p. 6.

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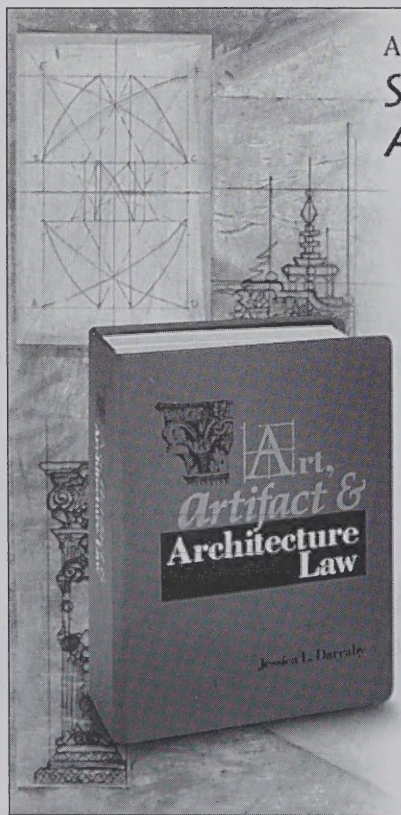

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A Copyright Primer for the Protection and Use of Fine Art Images

This article is intended to provide collectors, dealers, and museum and auction house professionals with a basic legal framework to address copyright issues in the use, exploitation, and protection of works of fine art. Intellectual property questions touch many activities and basic transactions in the art and museum world. A few illustrative examples: A collector with one of the most significant collections of cartoons and animation art wishes to publish a CD-Rom catalogue of her collection. A member of the Board of Trustees of "M" museum loans her favorite Warhol portrait to the museum and authorizes it to use the portrait for note cards and posters in the museum shop. An art historian writing a major treatise on Diane Arbus wants to publish several images obtained from the "Y" Museum. The estate objects to the publication. A museum, in connection with the exhibition of the work of a contemporary artist, puts images on its Web site and offers to sell T-shirts, posters, and catalogues with the artist's work.

The rapid advance of the digital technologies and the increasing demand for visual content provide significant opportunities to owners and users of works of fine art and focus even greater attention on intellectual property issues, particularly copyright. The often complex copyright issues are not new; works of fine art have traditionally presented difficult issues under the copyright laws whose origin lies in the printing press and the protection of writings. Issues raised in the digital environment, however, are different in degree and scope. The ability to transcend national borders, the ease of reproduction, alteration and distribution, as well as the potential for unauthorized manipulation, distortion, and alteration of the content-based materials make more evident the legal, ethical, and practical problems that are still unresolved in the print media.

"Works of fine art have traditionally presented difficult issues under the copyright laws whose origin lies in the printing press and the protection of writings."

The Internet, with its ability to make exhibitions and curatorial and archival material available to a global public, has caused museum and other art professionals to rethink basic concepts such as "stewardship," "exhibition," copyright, and control.

At the same time, software companies are in hot pursuit of digital copyrights of paintings, sculptures and other objects. Ownership of those rights allows a company to post works of art on electronic bulletin boards or to incorporate them in

"Software companies are in hot pursuit of digital copyrights of paintings, sculptures, and other objects."

CD-ROMs and other multimedia products. Numerous Internet sites are in use by dealers, collectors and auction houses to sell works of art.

Constitutional and Statutory Framework

"The source of the U.S. Congress' power to enact copyright laws is Article 1, section 8, clause 8, of the Constitution. According to this provision, "Congress shall have Power ... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors ... the exclusive Right to their respective Writings."[1]

The U.S. Congress has implemented its constitutional mandate in Title 17 of the United States Code known as the 1976 Copyright Act or Copyright Act of 1976 ("Copyright Act").[2] The Copyright Act was amended in September 1998 by the Digital Millennium Copyright Act which implements the World Intellectual Property Organization ("WIPO") Copyright Treaty and Performances and Photograph Treaty negotiated at the 1996 WIPO meeting in Geneva.

To be protected under current U.S. copyright law, a work "must be an original work of authorship fixed in a tangible medium of

1 *Feist Publications, Inc. v. Rural Tel. Serv. Co.* 499 U.S. 340, 346 (1991).

2 17 U.S.C. §§106(l) et. seq. The Copyright Act of 1976 became effective on January 1, 1978. All works of art created before that date are governed by the Copyright Act of 1909. On March 1, 1989, the U.S. joined the Berne Convention, modified by implementing legislation to make it compatible with domestic copyright laws. Copyright in the works of U.S. authors is protected automatically in all member nations of the Berne Union, and works of foreign authors who are nationals of a Berne Country are automatically protected in the U.S.

"The Copyright Act imposes no requirement of aesthetic merit as a condition of protection; however, a work must have 'at least some minimal degree of creativity'."

expression." "Original" means only that the work was independently created by the author. The Copyright Act imposes no requirement of aesthetic merit as a condition of protection; however, a work must have "at least some minimal degree of creativity."[3] In the 1999 case of *Bridgeman Art Library, Ltd. v. Corel Corp.*,[4] a U.S. District Court judge held that "slavish reproductions" of color transparencies of public domain artworks were not sufficiently original to be protected under either the copyright laws of the United Kingdom or the United States.

The copyright law lists eight categories of protected work.[5] Works of visual art—paintings, photographs, sculptures—are copyrightable subject matter as pictorial, graphic and sculptural works, while digital works can span several categories. Ideas, facts, titles, procedures, methods of operation or utilitarian designs, no matter how original, are not protectable by copyright.

Thus, only the expression, not the idea, is copyrightable. Copyright law protects the manner of expression, the author's analysis or interpretation, her structure and organization. It may be difficult to draw a line between protected expression and style.

One of the most common misunderstandings about copyright is the way copyright protection is secured. Registration with the Copyright Office, while a prerequisite for the filing of an infringement suit and an award of statutory damages and attorneys' fees, is not necessary to secure copyright protection. Before January 1, 1978, in order to secure federal copyright protection, a work was required to be published with copyright notice; works "published" in the United States without a copyright notice entered the public domain. Between January 1, 1978 and March 1, 1988, works published without copyright notice might have lost copyright protection if certain curative measures were not taken. The requirement of notice was eliminated by the Berne Convention Implementation Act of 1988 ("BCIA"), effective March 1, 1988, which was passed by Congress in order to bring U.S. law into compliance with international law.

The Exclusive Rights of the Copyright Owner

Under section 106 of the Copyright Act of 1976, the copyright owner has the exclusive right to:

- reproduce the work in copies or phonorecords
- prepare derivative works based on the copyrighted work (which includes the right to recast, transform or modify)
- distribute copies by sale or other ownership transfer, or to rent, lease or lend copies
- perform the work publicly
- display the work publicly.[6]

In 1990, the Visual Artists Rights Act (VARA) established, for the first time in federal law, a limited grant of "moral rights" to "authors of works of visual art" (certain one-of-a-kind "works of visual art" and numbered limited signed editions of no more than two hundred copies). Under Sec. 106A, authors (artists) have the right of attribution—the right to claim authorship and prevent the use of their names in conjunction with certain modifications of works. Authors also have a right of integrity, which allows them to prevent alteration of their work prejudicial to their honor and reputation and to prevent destruction of a work of "recognized stature." Specifically excluded from the definition of "works of visual art" are "works made for hire" and "a motion picture," "audiovisual work" and "electronic publication." The protection afforded moral rights which protect an author's personality rather than her economic rights is far more limited under VARA than the protection afforded to such rights in France, Germany, Italy, Mexico and Japan, which are strong moral rights countries.

The WIPO Copyright Treaty incorporates as an international norm the two following rights:

- Article 6 (the right of distribution) affords authors "the exclusive right to distribute the original and copies of their works including digital works."
- Article 8 creates a new right of communication to the public, which gives authors the right of "authorizing any communication to the public of their works, by wire or

3. *Feist Publications, Inc. v Rural Tel. Serv. Co.* 499 U.S. 340, 358 (1991).

4. *Bridgeman Art Library, Ltd. v. Corel Corp.*, 25 F. Supp. 2d 421 (S.D.N.Y. 1998), on reconsideration 36 F. Supp. 2d 191 (S.D.N.Y. 1999).

5. 7 U.S.C. 5 102(a). 1. Literary works, including computer software; 2. Musical works; 3. Dramatic works; 4. Choreographic works; 5. Pictorial, graphic, and sculptural works; 6. Audio visual, motion picture, and computer screen if sufficiently original; 7. Sound recordings; 8. Architectural works.

6. Under section 101, to "display a work" is defined as "to show a copy of it, either directly or by means of a film, slide, television, image or any other device or process or, in the case of a motion picture or other audiovisual work, to show individual images nonsequentially.

wireless means." The latter right, which blurs the distinction between the right of display, reproduction and performance, was interpreted by the U.S. Congress to exist in current U.S. copyright law without the need for amendment.

The Digital Millennium Copyright Act of 1998 (DMCA), which implements WIPO, does not expand a copyright owner's rights under U.S. law but does include provisions for enhanced protection of such rights. For example, 17 U.S.C. Title I § 1201 restricts the *circumvention of technological protections* for *copyrighted works* while Title II 17 U.S.C. '512 provides on-line service providers (OSP) safe harbors from claims for monetary damage, subject to certain conditions. Thus, if an OSP is in possession of material posted by users that infringes copyright, the OSP's liability is limited if, *inter alia*, the OSP does not have the actual knowledge that the work is infringing.

"Web operators, artists, galleries, and museums, in theory, enjoy the same copyright protection in cyberspace as in other media . . . "

Web operators, artists, galleries and museums, in theory, enjoy the same copyright protection in cyberspace as in other media; digital image files are equivalent to paintings, photographs, and other works of fine art and, if displayed or copied without permission, implicate the right of reproduction, distribution, and display. For example, in *Playboy Enterprises Inc. v. Frena*,[7] the U.S. District Court of Florida found that a subscription computer bulletin board service infringed *Playboy*'s rights to distribution and display by making *Playboy* magazine photographs available on its bulletin board. In another case, the placement of files of copyrighted clip art on a Web site have been found to implicate the reproduction right.

It now seems clear that copyright law will play an important role in cyberspace. Posting images on Web sites, electronic reproduction of photographic images, linking, and framing may infringe rights of the owner of the original image, as well as infringe rights of the owner of the linked or framed site. Linking and framing may also infringe an artist's moral rights.

Who Owns the Copyright?

The 1976 Copyright Act vests initial ownership of copyright in the "author" who is the creator—the person who fixes the work in a tangible medium of expression —unless it is a "work for hire." A work created by an employee within the scope of his employment is a "work for hire" or a work specially commissioned as a contribution to a collective work and the parties agree in writing it is a work for hire.[8] Rights in commissioned works of visual art vest initially in the artist, who is considered an independent contractor, not the collector who commissioned the work.

"It now seems clear that copyright law will play an important role in cyberspace."

Ownership of the "bundle of intangible rights" comprising copyright is separate and distinct from ownership of the physical work of art. Under current law, absent an explicit written transfer conveying copyright, the sale, gift, or transfer of an original work of art does not transfer the copyright in the work of art. For example, when the Warhol Estate transferred works of art by Warhol to the Warhol Museum, it did not transfer digital copyright in the works of art. An issue arose when the Museum posted the works on its Web site. Was the use permitted by the contract of sale, which permitted certain uses in connection with "publicity for an exhibition," or was it an infringement of the Estate's display and reproduction rights in the artworks?

Under the 1976 Copyright Act, any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by section 106, may be transferred and owned separately. The owner of any particular exclusive right is entitled,

7. *Playboy Enter., Inc. v. Frena*, 839 F. Supp. 1552 (U.S.D.C. M.D. Fla. 1993) is one of the first U.S. cases to consider that issue. In finding that an operator of a subscription computer billboard infringed Playboy magazine's display right, the Court held that "the display right precludes unauthorized transmission of the display from one place to another, for example, by a computer system .... However, in order for there to be copyright infringement, the display must be public. A 'public display' is a display 'at a place open to the public or ... where a substantial number of persons outside of a normal circle of family and its social acquaintances is gathered.' Melville B. Nimmer, 2 Nimmer on Copyright § 8.14(C) at 8-169 (1993). A place is 'open to the public' in this sense even if access is limited to paying customers." Id. at 1557. In *Playboy Enter., Inc. v. Webbworld Inc.*, 991 F. Supp. 543 (N.D. Tex. 1997), the court held that the two owners of Webbworld were vicariously liable for infringement of copyrights held by Playboy by displaying copies of nude images to subscribers on its Web site.

8. See 17 U.S.C. § 101.

to the extent of that right, to all of the protection and remedies accorded to the copyright owner. A copyright owner may divide copyright in the work in a number of ways: by the type of use and/or media, by an exclusive license or non-exclusive license, by a full interest or a divided interest, by territory or duration, to name only a few possibilities. A non-exclusive license is not a transfer of copyright ownership, but a transfer of a contract right; thus, it need not be in writing. The holder of a non-exclusive license cannot bring a copyright infringement action.

The terms and conditions of copyright licenses vary significantly. A licensee can only exploit the rights granted under the terms of the license. For example, if a gallery grants a museum the right to include photographs of the works of an artist it represents in an exhibition catalogue to accompany an exhibition of the artist's work, the museum will not be able to exploit the images on its Web site or on posters or merchandise. An artist may sell a painting or transmit a digital image without transferring any right to copy that image. Ownership of an original work of art or a copy of it does not necessarily mean that the collector or museum controls any of the exclusive rights of copyright. Thus, if a museum, collector, or photo archive provides a transparency or photograph of an image, they may be providing only access to a

"An artist may sell a painting or transmit a digital image without transferring any right to copy that image."

particular copy of the image, and the reproduction of such image may infringe the copyright owner's rights. That is why art historians are often obligated to deal with artists, collecting societies or their estates, as well as the museum who owns the artwork. A collector or museum that purchases photographs or works of fine art or seeks to exploit a collection must use due diligence to properly establish copyright ownership rights.

The 1976 Copyright Act specifically provides that copyright ownership is divisible and that any transfer of copyright must be accompanied by a writing. Thus, the mere sale of a work of art leaves the artist with the copyright. Prior to the 1976 Act (effective 1978), it was generally understood that when an author of an unpublished manuscript or work of fine art transferred that work, the transfer was presumed to include the right of first publication. This was known as the *Pushman* presumption. Thus, a gallery or museum might own the copyright in all unpublished works of an artist transferred to it before 1978 except in New York or California. In New York and California, laws were enacted reversing the *Pushman* presumption in 1966 and 1976, respectively.

Duration of Copyright: Is the Image in the Public Domain?

The public domain consists of works and images that do not enjoy copyright protection as a matter of law. Such images may be freely used, copied, adapted, distributed and displayed without fear of copyright infringement. This explains the mustache

"Works in the public domain are not protected by copyright, even when incorporated into a copyrighted work."

on the *Mona Lisa* or "self portrait" of Van Gogh with headphones. Works in the public domain are not protected by copyright, even when incorporated into a copyrighted work. A significant part of the public domain works were once protected by copyright but have lost that protection by expiration, forfeiture, or abandonment.

The duration of a copyright in the U.S. depends on whether the work is governed by the 1976 Act or by the preceding law, the 1909 Act. Under the 1909 Act, the system was 2 twenty-eight-year (28) year terms. Under the 1976 Act, for an individual author, the term was the life of the author plus fifty (50) years. The Copyright Term Extension Act of 1988 extends the term of copyright for works created on or after January 1, 1978 for an additional twenty years to make the term consistent with the term of copyright in the European Union.

For works published before 1978, the duration depends on whether the work was "published" or "unpublished." Copyright protection for works of art created prior to March 1988 (Berne Implementation) may also have been lost for failure to follow the copyright formalities, primarily the omission of notice on "published" copyrighted works. However, works like old photographs, for example, that have no affixed copyright notice may not be in the public domain since, if the photographs were never published, neither the 1909 Act nor the 1976 Act required the affixation of any copyright notice. In 1992, Congress amended the Copyright Act to provide that pre-1978 works then in their first term of copyright would be automatically renewed.

The concept of publication was an important and complex concept for works of visual art under the 1909 Act and under the 1976 Copyright Act. Under the 1909 Act, in general, the law was not entirely clear on whether a non-commercial display of a work of art constitutes publication. Particularly when works have been sold many times, and records are inadequate to

establish the publication history of the work, it may be difficult to determine the copyright status of the work. Similarly, limited distribution was held not to constitute publication under the 1909 Act. Many photographs, publicity stills for films, and other images of limited distribution or images provided to archives without limitation may be considered unpublished and therefore not required to have a copyright notice. In general, works which are unpublished not only have a different duration under current copyright law but may be treated differently under "moral rights" legal systems and in "fair use" analysis.

Recently, by virtue of the Uruguay Round of GATT, President Clinton signed certain implementing legislation which resurrected foreign copyright works that had entered the public domain in this country for omission of notice or failure to renew. Such works will have the copyright restored for the remainder of the term the foreign work would otherwise have had in the United States if the work had not entered the public domain.

Figure 1. COPYRIGHT TERM

	PRE-1999	NEW
Subsisting (pre-1978) copyrights	28 years, + 47 year renewal term = 75 years	28 years, + 67 year renewal term = 95 years
Works created on or after January 1, 1978	Life of the author plus 50 years	Life of the author plus 70 years
Joint works	Same as above, measured from life of last surviving author	Same as above, measured from life of last surviving author
Anonymous and pseudonymous works and works made for hire	75 years from publication or 100 years from creation, whichever expires first	95 years from publication or 120 years from creation, whichever expires first
Works created but not published before 1978	Same as post-January 1978 works but term expires no earlier than December 31, 2002 If work is published before December 31, 2002, term shall not expire until December 31, 2027	Same as post-January 1978 works but term expires no earlier than December 31, 2002 (no change from previous law) If work is published before December 31, 2002, term shall not expire until December 31, 2047
Presumption as to author's death	After 75 years from publication or 100 years from creation, whichever expires first; the author is presumed to have been dead for 50 years if Copyright	After 95 years from publication or 100 years from creation, whichever expires first; the author is presumed to have been dead for 70 years if Copyright
	Office records do not indicate that the author is still living or died within the last 50 years	Office records do not indicate that the author is still living or died within the last 70 years
Termination	Pre-1978 grants may be terminated during 5-year period commencing 56 years from date copyright was first secured	If previous termination right has already expired and was not exercised, copyright owner has a new termination right during 5-year period commencing 75 years from date copyright was first secured

Source: David Carson, General Counsel, U.S. Copyright Office

Figure 2. WHEN WORKS PASS INTO PUBLIC DOMAIN
Includes material from new Term Extension Act, PL 105-298

DATE OF WORK	PROTECTED FROM	TERM
Created January 1, 1978 or after	When work is fixed in tangible medium of expression	Life + 70 years[1] (or if work of corporate authorship, the shorter of 95 years from publication or 120 years from creation)[2]
Published before 1923	In public domain	None
Published from 1923 to 1963	When published with notice[3]	28 years; could be renewed for 47 years; now extended by 20 years for a total renewal of 67 years
Published from 1964 to 1977	When published without notice	28 years for first term; now automatic extension of 67 years for second term
Created before January 1, 1978, but not published	January 1, 1978, the effective date of the 1976 Act, which eliminated common law copyright	Life + 70 years or December 31, 2002, whichever is greater
Created before January 1, 1978, but published between then and December 31, 2002	January 1, 1978, the effective date of the 1976 Act, which eliminated common law copyright	Life + 70 years or December 31, 2047, whichever is greater

Source: Laura N. Gasaway, director of the law library and professor of law, University of North Carolina-Chapel Hill.

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[1]Term of joint works is measured by life of the longest-lived author.

[2]Works for hire, anonymous and pseudonymous works also have this term. 17 U.S.C. §302(c).

[3]Under the 1909 Act, works published without notice went into the public domain upon publication. Works published without notice between January 1, 1978 and March 1, 1989, effective date of the Berne Convention Implementation Act, retained copyright only if, e.g., registration was made within five years. 17 U.S.C. §405.

Notes courtesy of Professor Tom Field, Franklin Pierce Law Center.

Can Artwork be Recaptured from the Public Domain?

One area of dispute between rights holders and users is whether photographs of public domain work contain sufficient originality to be entitled to copyright protection in their own right as derivative works. To be copyrightable, a derivative work must be an original work of authorship. It is a close question, whether a photograph of a painting displays sufficient originality to qualify for copyright. Alternatively, a photograph of a sculpture or other three-dimensional object, which involves the photographer's judgment in selecting camera angles and lighting, is a clearer case of sufficient original authorship.[9] There was sufficient added authorship to a public domain work of art to entitle a small scale reproduction of Rodin's *Hand of God* to obtain copyright protection. In the case of *Alva Studios, Inc. v. Winninger*,[10] the court held that the reproduction embodies and results from Alva's skill and originality in producing an accurate scale reproduction of the original. The Court emphasized the difference in size, the different treatment of the base, and the quality control exercised by the museum's curatorial staff.

"It is a close question whether a photograph of a painting displays sufficient originality to qualify for copyright."

Simply because an underlying work may have fallen into the public domain doesn't necessarily mean that a reproduction of that artwork is in the public domain or can be copied. In *Bridgeman Art Library v. Corel Corp.*,[11] the court suggests that copyrightability depends on the nature of the derivative author's contribution.

The Bridgeman Case

The Bridgeman Art Library, Ltd. claimed to be the sole and exclusive proprietor of all authorized photographic and lithographic reproductions, prints, and digital images of works of art of numerous European master artists, including Michelangelo's *Sistine Chapel Ceiling* and Leonardo da Vinci's *Mona Lisa,* as the agent for the museums who owned the original works of art.

Bridgeman contended that Corel's collection of CD-ROM titles containing digitized photographic reproductions of public domain works of a variety of European masters must have been copied from its transparencies. Bridgeman commenced an action for copyright infringement, Lanham Act violations, common law unfair competition, and tortious misappropriation of goodwill.

Corel moved for summary judgment on the theory that, as a matter of law, reproductions of any work, let alone works in the public domain for hundreds of years, lacked sufficient originality to be copyrightable subject matter.

"Bridgeman contended that Corel's collection of CD-ROM titles containing digitized photographic reproductions of public domain works . . . must have been copied from its transparencies."

Based on recent choice of law precedent and U.K. publication of the photographs, Judge Lewis A. Kaplan applied the law of the U.K. to decide whether copyright subsists in Bridgeman's transparencies. He held that the transparencies lacked the required originality under U.K. law, although he also cited several United States Second Circuit decisions that require a "distinguishable variation" between the original and the copy:

> The Copyright Act extends protection only to original works of authorship. ...Important to this calculus is that the demonstration of some physical, as opposed to artistic skill does not constitute a distinguishable variation.'

With respect to the issue of infringement, the Court found no probative similarities between the parties' images. When, as here, the only similarity between two works is with respect to non-copyrightable elements, summary judgment is appropriate.

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8. See 17 U.S.C. § 101.

9. For cases involving originality in photographs, see *Gross v. Seligman*, 21 F. 930 (2d Cir. 1914) (photographer, after sale of photograph and copyright, took later picture with same model and pose but with addition of a smile on her mouth and a cherry in her teeth, held an infringement) and the related case of *Franklin Mint Corp. v. Natl Wildlife Art Exch.*, 575 F.2d 62 (3d Cir. 1978) (holding that later painting by artist of same subject was not infringement, as similarity reflected the common theme). See also *Rogers v. Koons* 960 F. 2d 3 01 (2d Cir. 1991).

10. *Alva Studios, Inc. v. Winninger*, 177 F. Supp. 265 (S.D.N.Y. 1959). See also *L. Batlin Son, Inc. v. Snyder*, 536 F.2d 486 (2d Cir. 1976)- see generally Rhoda L. Berkowitz and Marshall A. Leaffer, "Copyright and the Art Museum," *Columbia Journal of Art and the Law* 8 (1984), pp. 249-316.

11. See note 4 supra. See also *Woods v. Bourne Co.* 60 F.3rd 978 (2d Cir. 1995).

The plaintiff moved for reargument and reconsideration. On reargument the Court reversed its prior decision to apply U.K. law and decided that copyrightability was properly decided under U.S. law. Nevertheless, Judge Kaplan determined that the slavish reproduction of public domain masterpieces in a photographic medium failed to meet the originality standard required for U.S. copyright protection.

The complex nature of copyright duration including "termination rights," the difficulty of determining what constitutes published or unpublished works particularly with reference to slides or photographs of artworks, and recent law recapturing from the public domain foreign works of art make the determination of the copyright status of images and rights in museums and collections particularly difficult. Assuming the underlying image may have fallen into the public domain, does the photographing or digitization of a public domain image create a derivative work entitled to copyright protection? *Bridgeman* sets forth a possible framework of analysis but leaves many unanswered questions.

A United Kingdom Museum copyright group recently commissioned an in-depth report of the effect of *Bridgeman v. Corel* on the museum sector in the U.K. The report concluded that *Bridgeman* was not binding in the U.K. An opinion by a leading copyright specialist concluded that "there is no doubt that U.K. copyright law protects photographs of works of art ... and that is so irrespective of whether ... the subject of the photographs is more obviously a three-dimensional work, such as a sculpture, or is perceived as a two-dimensional work, such as a drawing or painting." At least under U.K. law, the threshold of originality to gain copyright protection is less than in the U.S. It is entirely possible that *Bridgeman* will be limited in future cases (the lawyer in *Bridgeman* conceded slavish copying), and it will remain an isolated opinion. Nevertheless, lawyers are monitoring cases to see its impact. *Bridgeman* could remove significant protection from museums that copyright their photographs. In order to protect and exploit works of art in their collections, museums may begin to rely increasingly on licensing and trademark principles.

Exemptions and Limitations on the Copyright Owner's Exclusive Rights

First Sale

A copyright owner's rights are limited in several respects under the Berne Convention and various international laws. The "first sale" doctrine permits the owner of a copy of a work to sell or otherwise dispose of the work. Thus, the owner of a CD-ROM of the Barnes Collections masterpieces would be free to sell the CD-ROM, but not to copy the copyrighted images on the disk. The application of the first sale doctrine on the Internet is as yet unresolved. For example, the sale of a digital poster by a gallery is

"A copyright owner's rights are limited in several respects under existing law."

different than the physical sale of the poster in the shop. Is the purchaser of the poster entitled to retransmit the lawfully acquired digital poster to another person?

One limitation on the display right is closely related to the first-sale doctrine. Section 109 provides that the owner of a work of visual art may display it to the public at the place where it is located.

Instructional Activities

Section 110(l) permits the performance or display of a copyrighted work in the course of "face-to-face" teaching activities in a classroom or similar place of instruction.

Section 110(2) permits the performance of a nondramatic literary or musical work or display of a work, by or in the course of a transmission, if "the performance or display is a regular part of the systematic instructional activities of a governmental body or a nonprofit educational institution" and meets certain other requirements.

Under this Section, copyrighted drawings, slides, maps, or art prints may be transmitted to a remote site without constituting an infringement; however, movies, videos, and other audiovisual works may not.

"Fair use is, perhaps, the most significant and murkiest of the limitations on a copyright owner's exclusive rights."

Fair Use

Exemptions and limitations to copyrights exist for teaching, private copying, and the general fair use or fair dealing exceptions of common law countries.

The U.S. fair use concept is somewhat more liberal and susceptible of broader interpretation than is the concept of fair dealing in U.K. and Canadian law.

Fair use is, perhaps, the most significant and murkiest of the limitations on a copyright owner's exclusive rights. Fair use is an affirmative defense to an action for copyright infringement. It is potentially available with respect to all manners of unauthorized use of all types of works in all media. When it exists, the user is not required to seek permission from the copyright owner or to pay a license fee for the use.

Based originally on judicial decision, Congress codified the doctrine in the Copyright Act of 1976. Section 107 of the Copyright Act of 1976 does not define "fair use." Instead, the preamble to Section 107 sets forth certain illustrative examples such as teaching, scholarship, and research as examples of a fair use and instructs that this use be considered together with four interrelated factors to determine whether the use made of a work in any particular case constitutes "fair use." The mere fact that an image may be used for broad purposes of education does not mean that a use is "fair."

The Supreme Court in its most recent discussion on fair use in *Campbell v. Acuff-Rose*[12] stated that all four statutory factors must be considered without favoritism and that fair use must be considered on a case by case basis. The doctrine is described as an "equitable rule of reason" in the legislative history of Section 107[13] and the embodiment of the delicate balance of the statutory scheme to promote free dissemination of information, "thereby benefiting the public by allowing the second author through a good faith productive use of the first author's work... (to create] a new, original work."

The application of Section 107 requires an analysis of both of its two paragraphs. The second paragraph lists four *non-exclusive* factors for determining whether a use is fair. These factors are

1. the purpose and character of the use, including whether commercial or nonprofit education
2. the nature of the copyrighted work
3. the amount and substantiality of the portion used, and
4. the effect of the use upon the potential market for or value of the copyrighted work.

The four "fair use" factors "are to be ... weighed together, in light of the objectives of copyright 'to promote the progress of science and the useful arts.'"[14]

Ralph Oman, former Register of Copyrights, noted that:

> in the use of a few frame enlargements to illustrate a classroom lecture versus the reproduction in a book of frame enlargements, the latter would be construed with less latitude from the user's standpoint in a 'fair use' analysis than the former. The fact that a university press is 'non-profit' will not be dispositive if the work in question would threaten the potential market value for any work that the copyright owner wants to publish—for example a book about the film by the copyright owner—even if the copyright owner has never released such a book in the past.[15]

Fair use is a case by case determination, and the distinction between fair use and infringement is not easily defined. This is particularly true in the area of visual arts where there have been few cases dealing with the use of fine art images. *Ringgold v. Black Entertainment Television*,[16] decided in 1997, is therefore an important precedent in its application of *Campbell* to visual art images. *Ringgold* involved an action for copyright infringement against the producers of a television program in which a poster of an original artwork owned by the High Museum was used as set dressing. Defendants contended that the nine instances in their television program in which portions of the poster were visible, individually and in the aggregate, were *de minimis*, in the sense that the quantity of copying (or at least the quantity of observable copying) was below the threshold of actionable copying. The aggregate duration of all nine segments was 26.75 seconds. The case is important not only for its implication for the virtual gallery, but also for its analysis of the fair use of visual images in film and television. The appellate court reversed the district court on grounds that the district court had improperly analyzed two of the fair use factors.

"Fair use is a case by case determination, and the distinction between fair use and infringement is not easily defined."

Speaking for a unanimous court, Chief Judge Jon Newman stated with respect to factor (1),

> defendants have used Ringgold's work for precisely a central purpose for which it was created—to be decorative. It is not difficult to imagine a television program that uses a copyrighted visual work for a purpose that heavily favors fair use. If a TV news program produced a feature on Faith Ringgold and included camera shots of her story quilts, the case for a fair use defense would be extremely strong.

12. 114 S.Ct. 1164 (1994).

13. A House of Representatives Report of the Committee on the Judiciary noted that any precise definition of fair use was impossible and said that the endless variety of situations and combinations of circumstances that can arise in particular cases precludes the formulation of exact rules in the statute. See H.R. Rep. No. 90-83, at. 29-30 (1967).

14. See *Campbell v. Acuff-Rose Music*, Inc., 1 14 S. Ct. 1 164 (1994).

15. Letter from Ralph Oman to David Bordwell (Jan. 7, 1992) in *Cinema J.* (Winter 1993).

16. 126 F.3d 70 (2d Cir. 1997). The author of this article represented Faith Ringgold.

> The same would be true of a news feature on the High Museum that included a shot of "Church Picnic." However, it must be recognized that visual works are created, in significant part, for their decorative value, and, just as members of the public expect to pay to obtain a painting or a poster to decorate their homes, producers of plays, films, and television programs would generally expect to pay a license fee... .Considering the first fair use factor with the preamble illustrations as a "guide[ ]," we observe that the defendants' use of Ringgold's work to decorate the set for their television episode is not remotely similar to any of the listed categories. In no sense is the defendants' use 'transformative.'[17]

With respect to factor (3) Judge Newman stated,

> Even if the third factor favors the defendants, courts considering the fair use defense in the context of visual works copied or displayed in other visual works must be careful not to permit this factor too easily to tip the aggregate fair use assessment in favor of those whom the other three factors do not favor. Otherwise, a defendant who uses a creative work in a way that does not serve any of the purposes for which the fair use defense is normally invoked and that impairs the market for licensing the work will escape liability simply by claiming only a small infringement.

"Fair use may be considered along a spectrum of uses. Copying and using copyrighted artwork for commercial purposes or broad distribution . . . is much more likely to be considered a copyright infringement than using the same images or works in a classroom for teaching or in a critical, scholarly article . . ."

Summary judgment on factor (4) was inappropriate when Ringgold contended that there was a potential market for licensing her story quilts and stated in an affidavit that in 1995 she earned $31,500 from licensing her various artworks.

Fair use may be considered along a spectrum of uses. Copying and using copyrighted artwork for commercial purposes or broad distribution—such as replicating an image on a T-shirt or incorporating copyrighted images into commercial multimedia products or illustrations in textbooks or simply displaying them on the World Wide Web or reproducing the original artwork as a poster or postcard—is much more likely to be considered a copyright infringement than using the same images or works in a "classroom" for teaching or in a critical, scholarly article about the artwork in question, or in fulfillment of degree requirements such as a term paper, thesis, or dissertation. The case for "fair use" in connection with scholarly, analytical, or critical use of images is a strong one.[18]

This article has only scratched the surface of the copyright issues involved in the protection and exploitation of fine art images in the print and new media. It has not even discussed another valuable source of protection—trademark rights—which, along with contract and data base protection, may prove as viable for the collector and museum as copyright.

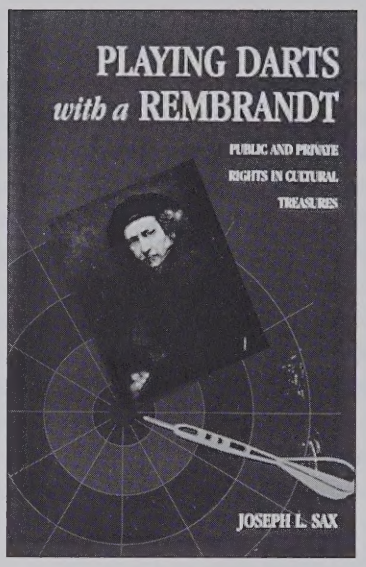
Barbara Hoffman, Esq.

Barbara Hoffman practices arts, cultural, and intellectual property law in New York. She recently edited and contributed to Exploiting Images and Image Collections in the New Media, *published by Kluwer Law Int. 1999, a collection of essays by prominent intellectual property experts in 14 countries.*

17 Id. at 79.

18. See *Ferrato v. Castro*, 888 F. Supp. 33 (S.D.N.Y. 1995). (Plaintiff's motion to dismiss with prejudice granted, holding that the incorporation by defendant of photographic images of plaintiff's copyrighted photographs in a mixed media collage under the supervision of the Whitney Museum Independent Studies Program of New York City without plaintiff's permission for the purposes of exhibition in a show entitled "The Subject of Rape" and subsequently included in the exhibition catalogue was fair use. The court refused to consider whether or not other uses not before it were fair use.)

Joseph L. Sax, ***Playing Darts with a Rembrandt: Public and Private Rights in Cultural Treasures*** (University of Michigan Press, 1999).



"Sax takes us on a winding journey in search of a balance between private property rights and public interests . . ."

From Michelangelo's frescoes to Richard Nixon's papers, from the Dead Sea Scrolls to the Barnes Collection, Joseph Sax takes us on a winding journey in search of a balance between private property rights and public interests to illuminate the ongoing, but often neglected, struggle over whether society should impose an obligation—legal or ethical—of "stewardship" on those who own objects of artistic, cultural or historical interest. We are encouraged to consider the competing interests of property owners and the rest of society, and, indeed, the competing interests of a single individual who may value his legal right to exercise dominion over his owned objects while also sensing an obligation to preserve them for, and share them with, present and future societies.

The tensions inherent in proposing limits on a property owner's rights are reflected in Professor Sax's suggestions for addressing the dilemma. He encourages voluntary action while also supporting some obligatory controls. Sax does not structure clear resolutions, and he, in fact, acknowledges that his goal is to suggest possibilities rather than resolve the problems.

Thus, the book raises many questions, proposes some solutions, and ultimately leaves the issues open for further debate.

Sax is a law professor at the University of California at Berkeley and a former Counselor to the Secretary of the Interior. He approaches the subject matter primarily from the point of view of United States laws, which are highly protective of privacy and personal property interests, and he challenges some long-ingrained notions of private property owners' freedom to do as they wish with their possessions.

Sax establishes his point of view early in the text. While acknowledging that art collectors, for example, should be able to collect

"Sax brings a cautiously pro-protection viewpoint to the issue . . ."

art "according to their own tastes and have enjoyment of it," he asserts that "[t]he conjunction of legitimate private and public interests...suggest that ordinary unqualified notions of ownership are not satisfactory for such objects."[1] He courageously asserts that the minimum controls imposed on the owners of such objects should be "a bar on destruction and on denial of access, and at least a presumption against grants of exclusive access to particular individuals (such as authorized biographers or favored researchers)."[2] A recognized expert in the areas of environmental protection and water law, Professor Sax brings a cautiously pro-protection viewpoint to the issue of whether protective controls should be imposed on owners of important cultural objects.

Should an owner of a great artist's work have the unqualified right to destroy it?

Sax supports his theory of 'stewardship' by differentiating significant cultural objects from other private property, and by analogizing his proposal of limited public intervention to laws affecting intellectual property such as patents and copyrights. At the outset, Sax offers a concise blueprint of the issues and basic theory that are confronted throughout the book: "The fate of most things is of interest only to its owner. Some objects, however, regardless of who owns them, are important to a larger community: a fossil of great scientific importance, historic documents, the papers of a renowned writer, or a work of artistic genius."[3]

The book explores ways in which the community might appropriately influence the fate of objects that, while

1. p. 9.

2. pp. 9-10.

3. p. 1.

privately owned, are nonetheless important to the community because they embody "ideas, knowledge and inspiration upon which further work relies."[4] The fine arts are but one of several topics used by Sax to make his point. We are transported as far back as the 14th century to consider examples of "owner-stewards" who recognized some ethical, if not legal, obligation to preserve their collections for the greater good of society.[5] The book's varied landscape, through

"... he leaves largely unresolved the thorny and enormous task of designating which objects are sufficiently deserving of additional protection."

time and topic, illuminates the breadth of societies' struggles to address these dilemmas.

Sax's contemplative journey leads us in many directions. We are presented with the struggles of the architectural community and the public to address functional needs that may require a building owner to alter an important structure. We examine privacy rights as they compete with the public's interest in accessing institutional collections, the objects and results of scholarly research, and the personal papers of notable individuals. Sax offers vigorous critiques of scholars' handling of the Dead Sea Scrolls and the failure of American law to safeguard many antiquities and paleontological objects. Sax's proposals seem to be more practical and possible in the historical and scientific realm than in the area of private ownership of art.

In the area of the fine arts, Sax poses for consideration the question of whether an owner of a great artist's work should have the unqualified right to destroy it. He provides some illuminating examples that highlight the diversity of motivations that drive such action, be they political (the Diego Rivera/Rockefeller dispute over a mural portrait of Lenin in Rockefeller Center), religious (Pope Gregory XIII's unfulfilled intention to destroy Michelangelo's Sistine Chapel frescoes due to their 'immorality'), personal vanity (Lady Churchill's destruction of Graham Sutherland's portrait of an aging Sir Winston), or private eccentricity (Dr. Barnes' behavior regarding his important collection). Sax does an excellent job of highlighting the dangers inherent in unfettered ownership of important works. But he leaves largely unresolved the thorny and enormous task of designating which objects are sufficiently deserving of additional protection.

From a practical standpoint, extending obligations of preservation and access to all works of art—or even to those works protected by the Visual Artists Rights Act, the United States' only federal moral rights law protecting artwork, would lead to unmanageable bureaucratic demands and an ever-growing inventory of works that must be monitored with attendant costs and liabilities. Moreover, many works of art, even art of recognized quality, do not rise to the level of public importance to merit the same protection as acknowledged artistic masterpieces or objects of undisputed historical or scientific importance. The devil will be in the details: to design a process to determine which works merit the public's collective focus—such a process would seem to be mandatory if a realistic plan of protection is to be pursued.

From a legal perspective, the examples highlighted by Sax raise issues of property law, privacy rights, copyright, public zoning and contract, with each situation varying in the competing legal interests involved. Sax does comment on California's art preservation statutes and, very briefly, on the federal Visual Artists Rights Act, but he does not elaborate on ways that such laws could assist in resolving the issues he raises. A brief overview of the premises of the laws mentioned above would have assisted the reader in better understanding the legal implications of imposing additional obligations of "stewardship" and "public access" on private owners of important objects. For example, copyright law provides the author of a creative work (whether it be a work of art, private writings or scholarly research) with the exclusive right to determine when, and indeed if, the work will be publicly displayed, distributed or reproduced. A legal obligation to provide public access to art would, therefore, need to be harmonized with federal copyright law. Similarly, contract law generally allows the parties to a contract, such as a donor and recipient of a work of art, to determine between them the specific terms of the gift. If museums were to endeavor to adopt binding "uniform, identical basic rules for gifts,"[6] as Sax recommends, such requirements could conflict with basic rights inherent in our laws of private contract. The differing circumstances under which gifts are made—and the personal nature of many such relationships—may defeat any effort to standardize the gifting

4. p. 2.

5. p. 70.

6. p. 199.

process. Obviously, complexities abound in each topic raised by Sax. But, given the size and scope of the book, a more comprehensive legal discussion may not have been feasible.

Professor Sax does not, however, take a primarily legal approach to these matters. In fact, he encourages us to think beyond the concrete laws of property and privacy rights to explore the possibility that human nature recognizes a shared expectation—indeed, a shared need—to protect and to share with each other the most accomplished works of intellectual and artistic genius. He asserts that an offer by an institution to receive and preserve material in exchange for providing a reasonable period of sequestration "should generate a moral duty on the owner to preserve" the material.[7]

"Clearly, donors, recipients, creators and consumers will have differing perspectives on the severity of the problems and the appropriateness of legal intervention. . ."

Sax focuses us consistently on the notion that we as a society should promote a system that encourages open dialogue among all interested parties pertaining to the use and disposal of important works. He explores potential balances that might be struck to resolve certain situations. Asserting that "[c]onventional notions of ownership and dominion are unable to provide adequately for public access, openness, and preservation,"[8] Sax offers suggestions such as expecting those with major holdings to model their behavior after that of "successful, satisfied, responsible major collectors"[9] and considering a "system of obligatory, expense-compensated loans to public institutions" [id.]. He states that the purpose of the book is to "illuminate the common themes" of the issues discussed and to recognize a "species of qualified ownership founded on the recognition that some objects...are constituent of a community, and that ordinary private dominion over them insufficiently accounts for the community's rightful stake in them."[10]

Despite the enormity of the problems it raises, the book does not leave us with a sense of helplessness. Sax offers a variety of possible solutions, some more practical than others, leaving readers challenged ultimately to form their own opinions and reach their own conclusions. Clearly, donors, recipients, creators and consumers will have differing perspectives on the severity of the problems and the appropriateness of legal intervention on owners' rights. The book presents a compelling opportunity to ponder the general concepts of property rights, privacy, preservation, scholarship, and public access as they relate to artistic, cultural, and historical treasures. While the answers to these dilemmas may not be clear, the questions posed and troubling examples cited certainly illuminate the need for discussion on the topic. Those interested in the preservation of cultural objects should read this book with thoughtful attention and encourage discussion among their colleagues of the important legal, cultural, and ethical issues—and possible solutions—ably illuminated by Professor Sax.

Susan B. Bruning, Esq.

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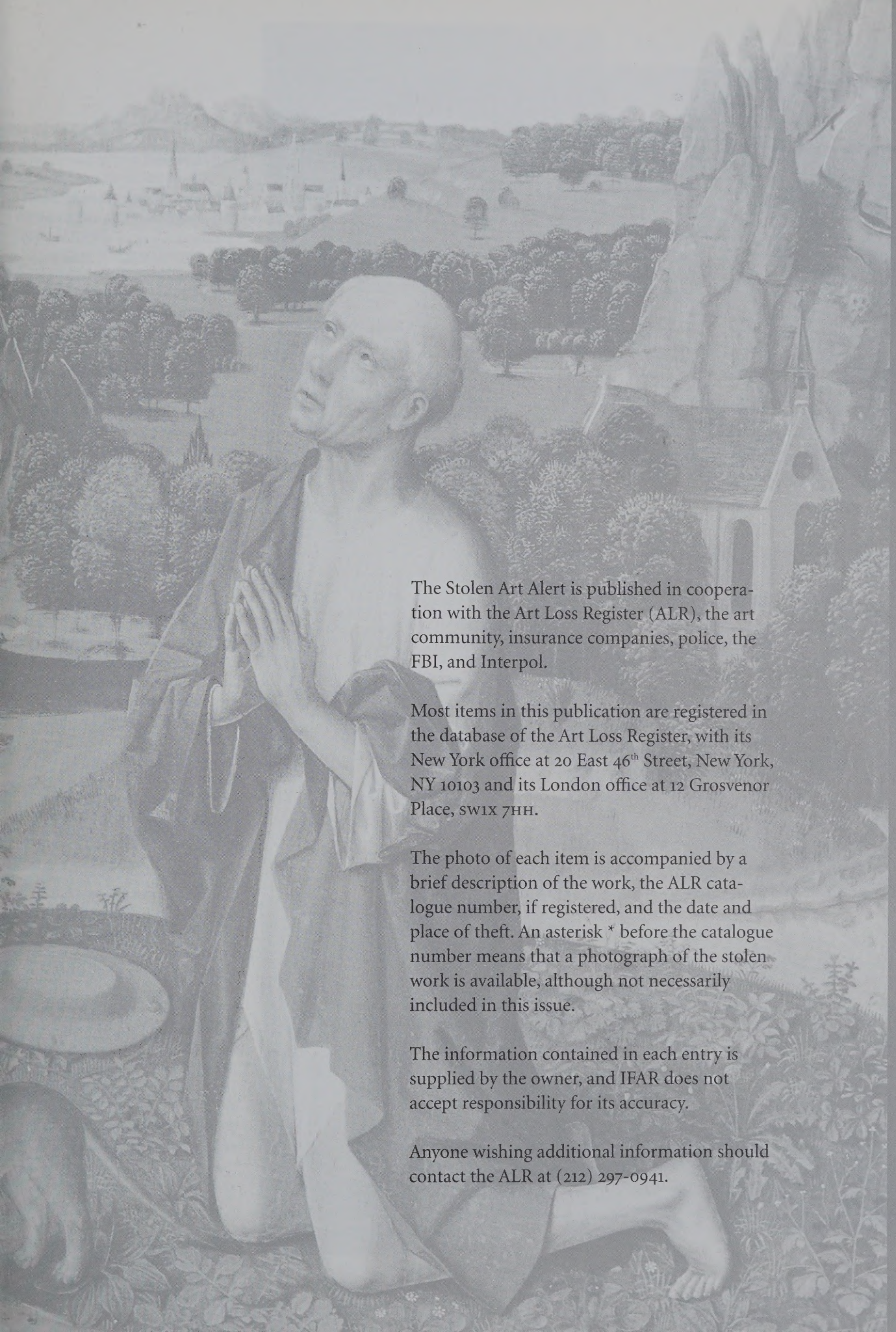
7. p. 198.

8. p. 197.

9. p. 66.

10. p. 197.



Stolen Art Alert

The Stolen Art Alert is published in cooperation with the Art Loss Register (ALR), the art community, insurance companies, police, the FBI, and Interpol.

Most items in this publication are registered in the database of the Art Loss Register, with its New York office at 20 East 46th Street, New York, NY 10103 and its London office at 12 Grosvenor Place, SW1X 7HH.

The photo of each item is accompanied by a brief description of the work, the ALR catalogue number, if registered, and the date and place of theft. An asterisk * before the catalogue number means that a photograph of the stolen work is available, although not necessarily included in this issue.

The information contained in each entry is supplied by the owner, and IFAR does not accept responsibility for its accuracy.

Anyone wishing additional information should contact the ALR at (212) 297-0941.

Stolen Art

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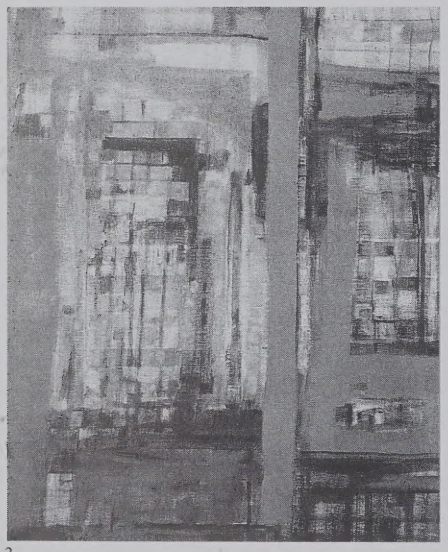

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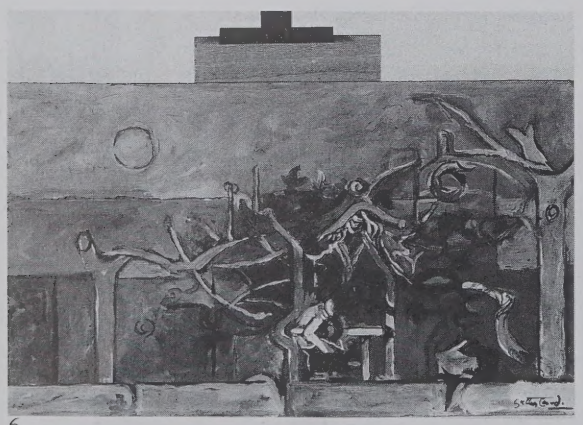

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PAINTINGS*

1. Georges Braque (French, 1882-1963). *Verre et Fruits*, 1925. Oil on canvas. Oval. 27 x 35 cm. Signed l/r. *L00.623.1. Stolen from a residence in Zumikon, Switzerland between November 14 and December 30, 1999. See color photo on inside back cover.

2. *Madonna and Child* (Byzantine, 16th century). Oil on panel. *N00.53. Stolen from an antiques show in West Palm Beach, FL on January 12, 2000.

3. Marie-Hélène Vieira da Silva (French, 1908-92). *Les Fenêtres II*, 1966. 55 x 45 cm. Signed l/l. *L99.460. Stolen from a private residence in Belgium on January 20, 1999.

4. Graham Sutherland (English, 1903-80). *Vine Pergola* 1947. Oil. 23 x 41.5 cm. Signed l/r: Sutherland.*L98.785. Stolen from a private residence in Cannes, France on December 16, 1997.

5. F. C. B. Cadell (English, 20th century). *Rhum from Iona*, c.1910. Oil on panel. Signed l/r. 13.5" x 17.5". *L99.1215. Stolen in London, U.K. on June 8, 1999.

6. Marion Greenwood (American, 20th century). *Amy*. Oil on canvas. 30" x 24". *L00.638. One of several works stolen from a private residence in Woodstock, NY on March 5, 1999.

7. The Master of the Rotterdam Saint John on Patmos (Netherlandish, active c. 1415-75). *Saint Jerome Praying in a Landscape.* Tempera and oil on panel. 12" x 9⅛" (30.5 x 23.2 cm). Stolen from the International Antiques Show in Milan, Italy on April 10, 2000.

*Numbering for the year 2000 Cumulative Index of Stolen Art and the 2000 Cumulative Index of Missing Art begins with this issue.

The following four paintings were among six stolen from a residence in Canoga Park, CA between March 12 and March 15, 2000. *N00.50:

8. Alonso Cano (Spanish, 1601-67). *Holy Family and the Child St. John the Baptist*, ca. 1601-67. Oil on canvas. 44 1/2" x 37 3/4".

9. Juan Villalobos (Spanish, 17th century). *Glorification of the Virgin*, 1695. Oil on canvas, 75" x 43". With "Juan Villalobos 1695" on two banners in the lower portion of the painting.

10. Rivera Spannietta (Spanish, 1601-66). *St. Jerome.* Oil on canvas. 40" x 30 1/2". Signed on the back of the canvas.

11. *Virgin and Child with a Female Saint (St. Anne?)*, 17th century. Oil on wood panel. 51 1/2" x 39". See color photo on inside back cover.

12. James Rizzi (American, 20th century). *The Happy Orange Ginnt*, 1972. Oil on canvas. 50 3/8" x 36 3/8". *N00.48. One of several works of art stolen from a private residence in Los Angeles, CA in February 2000.

13. Peter Nye (American, 20th century). *17th and Harrison*, 1988. Oil on masonite. 11" x 15". *N00.42. One of 25 works of art stolen from the home storage area of a San Francisco art dealer in mid-February, 2000.

14. A.A. Glendening (English, 19th century). *Harvesting.* Oil on canvas. 20" x 32". Signed and dated 1867. *L00.716. One of several paintings stolen from a private residence in Suffolk, U.K. on March 20, 2000

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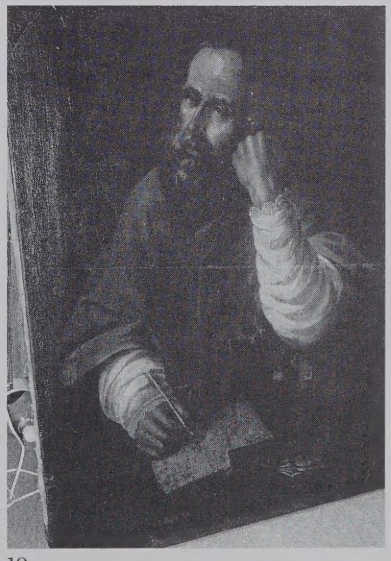

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DRAWINGS

15. Pablo Picasso (Spanish, 1881-1973). *Femme Assise aux Bras Croisés*, 1902. Colored pen and wash on the back of a playing card. 13.5 x 10.5 cm. *L00.623.2. Stolen from a residence in Zumikon, Switzerland between November 14 and December 30, 1999.

The following two drawings by Henry Moore (English, 1898-1986) were stolen from a private residence in Cannes, France on December 16, 1997. *L98.785:

16. *Six Reclining Figures*, c.1951-52. Watercolor. 24 x 29 cm. Signed l/l: Moore 54. Page 159 from Sketchbook 1950-51. Misdated 1954. Shown here: recto of a double-sided work.

17. *Group of Standing Figures*, 1951. Watercolor. 24 x 29 cm. Signed l/r: Moore 51. Page 101 from Sketchbook 1950-51. Recto, double-sided work. See color photo on inside back cover.

18. A. Lassell Ripley (American, 20th century). *A Covey Find*, ca.1948. Watercolor. 20" x 29". *N00.44. Stolen from a private residence in Harding Township, NJ sometime in 1994.

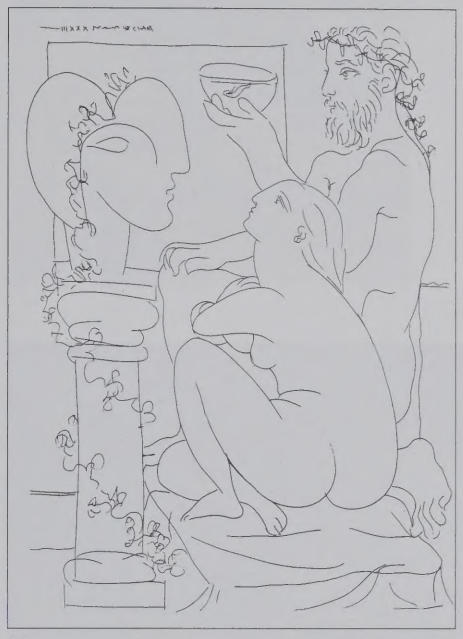
19. Bernardino Barbatelli, called Poccetti (Italian, 1548-1612). *Studies Recto/Verso of Seated and Kneeling Women and Head Studies*, ca.1590-1610. Red and black chalk on white paper. 10 1/2" x 15 7/8". Signed recto, u/l: del Poccetti. *N00.31. Stolen from a New York gallery on January 21, 2000. Shown here: verso. See color photo of recto on inside back cover.

PRINTS

The following two works by Pablo Picasso (Spanish, 1881-1973) were stolen from Temple Beth El in Boca Raton, FL between April 15 and May 1, 2000:

20. *Sculpteur avec coupe et modèle accroupi*, March 1933. Plate 44 from the *Suite Vollard* (B. 152). Etching on laid paper, watermark Vollard. 10 1/2" x 7 5/8". Signed in pencil l/r margin at a later date; numbered 37/250.

21. *Femme nue assise, la tête appuyée sur la main*, March 1, 1934. Plate 37 from the *Suite Vollard* (B. 218). Engraving on Arches paper. 10 7/8" x 7 3/4". Signed in pencil l/r margin at a later date; numbered 76/250.



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SCULPTURE

22. *Cherub and Nymph Astride a Dolphin*, 19th century. Gilt bronze. *N00.54. Stolen from a New York, NY gallery on January 5, 2000.

21.

CERAMICS

23. Marc Chagall (French, 1887-1985). *Child on a Goat*, c.1952. Earthenware. 18.5 x 25.5 x 11 cm. Signed: M. Chagall. *G99.28. Stolen from a gallery in Cologne, Germany on November 14, 1999.

CLOCKS

24. Robert Lumkin (English, 17th century). *Ebonized bracket clock.* H: 33 cm. W: 25 cm. *L00.822. Stolen from a private residence in Surrey, U.K. on March 20, 2000.

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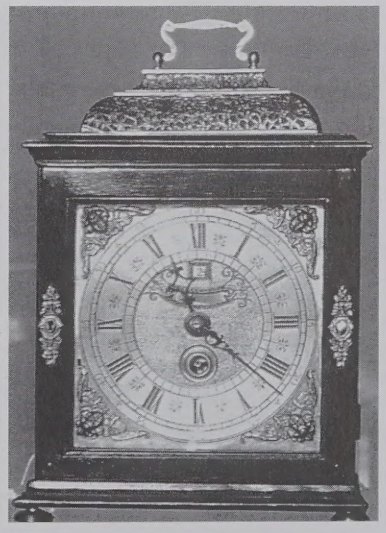

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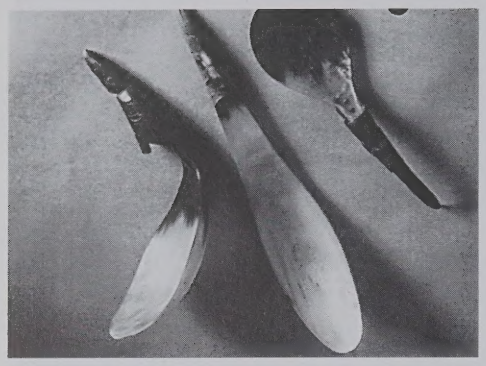

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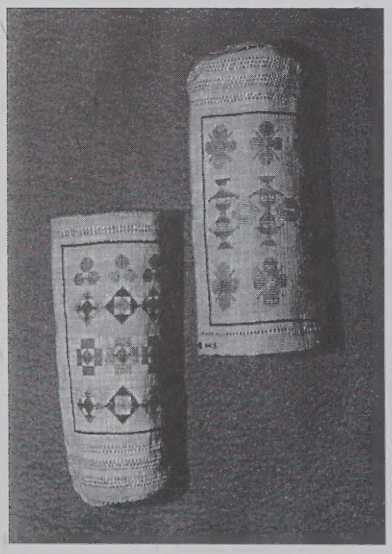

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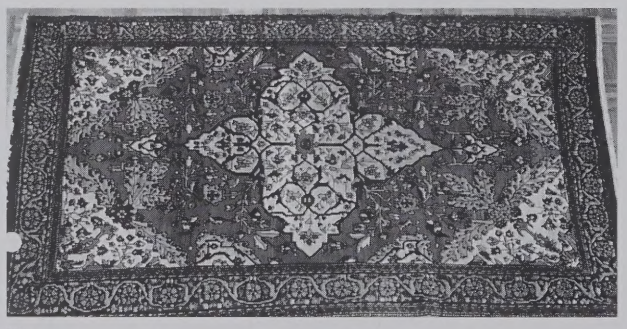

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NATIVE AMERICAN ARTIFACTS

The following five Northwest Indian objects were stolen from a display case in a public area in Stamford, CT on March 11, 2000. *N00.49.

25. *Three spoons* made from animal horns.

26. *Woven basket.* H. 3.5". C. 10.5". Lid diameter: 2.5".

27. *Two basketry pieces.* Purses. Woven grass and silk.

Not illustrated:

28. *Stone pipe.* Carved with the figures of bear, fish and raven.

29. *Rattle.*

RUGS, TAPESTRIES

30. Turkish Rug. Wool. 9.8' x 13.5'. *N00.51. Stolen from a parked van in West Covina, CA on March 5, 2000.

31. Persian Rug (Bidjar [Kurd]), 1875-99).Wool. 7'6" x 11'2". *N00.47. One of four rugs stolen from a van parked outside a Connecticut gallery on November 21, 1999.

MISCELLANEOUS

The following three classic comic books were stolen from a private residence in Los Angeles, CA between October 31, 1999 and January 21, 2000. *N00.26:

32. *Action Comics*, Issue, No.1. June 1938. The debut of Superman.

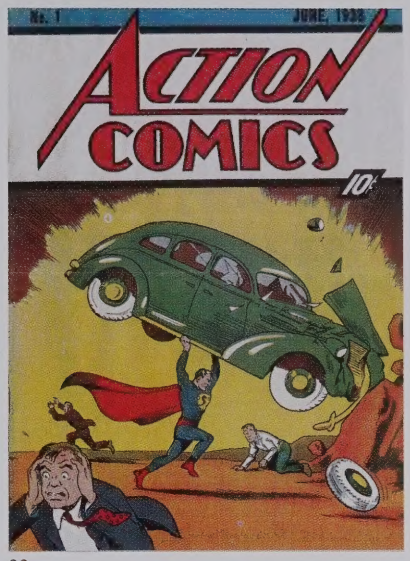
33. *Detective Comics* Issue, No.1. March 1937.

34. *Detective Comics* Issue, No. 27. May 1939. The debut of Batman.

35. *Abwehr Enigma Cipher Machine*, c.1939-1945. 16.5 x 25 x 27 cm. *L00.643. Stolen from a museum in Northamptonshire, U.K. on April 1, 2000.

36. *Revolutionary War Era Cannon* (American, 18th century). Bronze. Painted black. Approx. length: 40". Bore: 1 1/2". Presented to the community of Hatboro, PA in 1861 to honor Revolutionary War soldiers. Stolen from a borough monument between April 29 and May 1, 2000. Photo shows cannon similar to the one stolen.

37. *Strong Box (or missal coffer)*, (French, ca.1430-70). Iron on an oak core, with leather. 5" x 4 3/4" x 7 1/4". *N00.31. One of two coffers stolen from a New York gallery on January 21, 2000.



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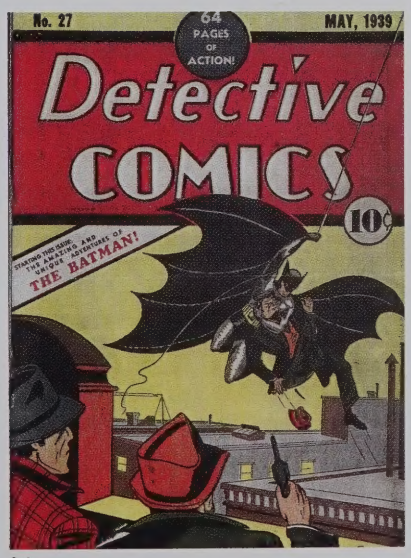

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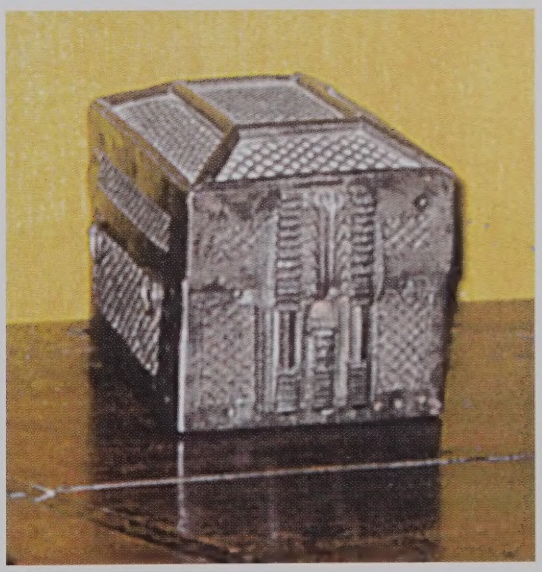
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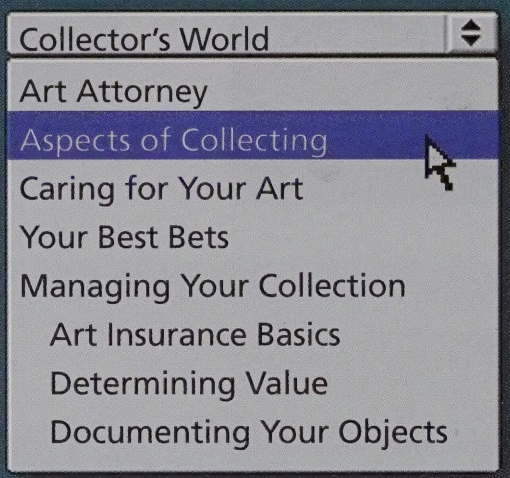

It didn't seem right, keeping all these resources to ourselves.

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Missing Art

PAINTINGS

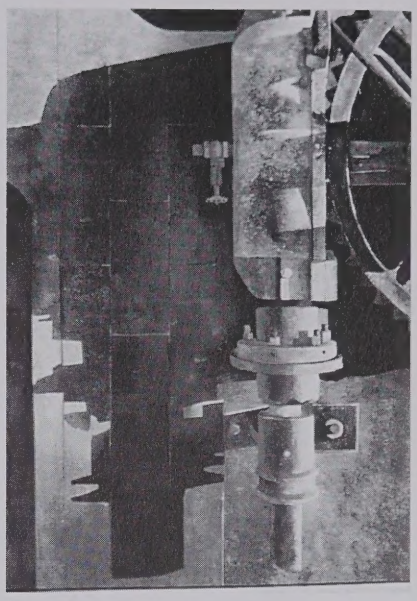
1. Milton Avery (American, 1893-1965). *Harbor*, 1956. Oil on canvas. 46" x 32". Signed and dated recto l/l and verso and inscribed verso: Harbor. *N00.30. Found missing from a New York, NY storage facility in 1994.

2. Robert Mangold (American, 20th century). *Imperfect Triangle Within Two Rectangles*, 1977. Acrylic and black pencil on masonite. Two attached panels. Inscribed with title and date verso. 20" x 28". *N00.73. Discovered missing from a New York, NY gallery on January 5, 2000. (Not illustrated here.)

DRAWINGS

3. Lawrence R. Webster (American, 20th century). *The Machine*, ca.1990-94. Watercolor. Approx. 30" x 21". *N00.25. Lost in transit between Massachusetts and Illinois.

1.



3.

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IFAR Journal; including the Stolen Art Alert: Vol. 1, 1998 (3 issues), $10 per issue; Vol. 2; 1999, $10 per issue; $15 current issue

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SATURDAY, APRIL 29, 2000

This workshop/conference, organized by the International Foundation for Art Research (IFAR) in collaboration with NYU, addressed the legal and artistic issues involved in establishing the provenance of a work of art and in otherwise exercising due diligence in acquiring art. Particular reference was made to art looted before and during World War II and to antiquities.

Copies of the following reference materials (approx. 400 pp.) compiled by IFAR and distributed to conference attendees are now available as a package from IFAR:

Suggested Websites for Provenance Research, Art and Cultural Property Law, and Art Theft
Cultural Property Contact List
Sources for WW II Provenance Research at the Frick Art Reference Library
Provisional List of Names Mentioned in Relation to Art Looting During the Holocaust Era (Comm. for Art Recovery)
International Regulations Concerning the Export of Cultural Property: An Update
UNESCO Handbook of National Regulations Concerning the Export of Cultural Property, 1988

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Conference Proceedings are being edited for the next issue of *IFAR Journal.*

IFAR is grateful to the
Samuel H. Kress Foundation
for a generous grant in partial support of this conference.

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Stolen Art

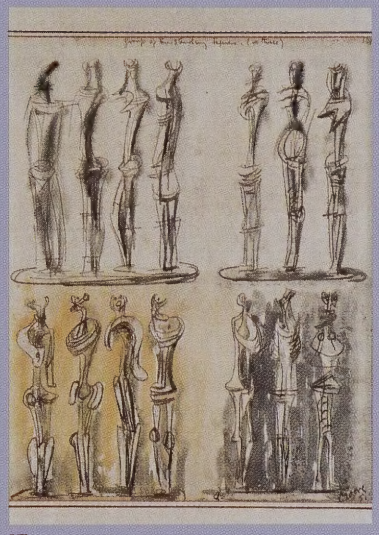
1.

13.

1. Georges Braque (French, 1882-1963). *Verre et Fruits*, 1925. Oil on canvas. Oval. 27 x 35 cm. Signed l/r. *L00.623.1. Stolen from a residence in Zumikon, Switzerland between November 14 and December 30, 1999. See item no. 1, p. 40, this issue.

11. *Virgin and Child with a Female Saint (St. Anne?)*, 17th century. Oil on wood panel. 51 1/2" x 39". Stolen from a residence in Canoga Park, CA between March 12 and March 15, 2000. See item nos. 8-11, p. 41, this issue for other paintings stolen in same theft.

8.



17.

17. Henry Moore (English, 1898-1986). *Group of Standing Figures*, 1951. Watercolor. 24 x 29 cm. Signed l/r: Moore 51. Page 101 from Sketchbook 1950-51. Recto, double-sided work. *L98.785. Stolen from a private residence in Cannes, France on December 16, 1997. See item no. 16, p. 42, this issue for another drawing stolen in the same theft.

19. Bernardino Barbatelli, called Poccetti (Italian, 1548-1612). *Studies Recto/Verso of Heads and of Seated and Kneeling Women*, ca.1590-1610. Red and black chalk on white paper. 10 1/2" x 15 7/8". Signed recto, u/l: del Poccetti. *N00.31. Stolen from a New York gallery on January 21, 2000. Shown here: recto. See item no. 19, p. 42, this issue, for verso.

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The Case For Notoriety
Art Research News
Volume 1 Number 2 / 1981
Art Research News is the quarterly membership publication of the International Foundation for Art Research
International Protection of Cultural Property
Morning papers of the Symposium held October 17, 1980 Dedicated to Chester F. Gorman
IFARreports
Volume 12, Number 4
April 1991
Formerly the Stolen Art Alert and Art Research News
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its scope, its impact, and its control
by Bonnie Burnham
IFAR Journal
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